REPORT

OF THE

ROYAL COMMISSION ON TRADE DISPUTES

AND

TRADE COMBINATIONS.

Presented to both Houses of Parliament by Command of His Majesty.

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1906.

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Royal Warrant.

EDWARD, R. and I.

Edward the Seventh by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith, to :—

Our right trusty and well-beloved Councillor Andrew Graham Murray, one of our Counsel learned in the Law, our Advocate in Scotland, Chairman;

Our trusty and well-beloved Sir William Thomas Lewis, Baronet;

Our trusty and well-beloved Sir Godfrey Lushington, Knight Grand Cross of our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of our Most Honourable Order of the Bath;

Our trusty and well-beloved Arthur Cohen, Esq., one of our Counsel learned in the Law ; and

Our trusty and well-beloved Sidney Webb, Esquire; Greeting!

Whereas we have deemed it expedient that a Commission should forthwith issue to enquire into the subject of Trade Disputes and Trade Combinations and as to the law affecting them, and to report on the law applicable to the same and the effect of any modifications thereof;

Now know ye that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these presents authorize and appoint, you, the said Andrew Graham Murray ; Sir William Thomas Lewis; Sir Godfrey Lushington; Arthur Cohen; and Sidney Webb to be our Commissioners for the purposes of the said enquiry.

And for the better effecting the purposes of this Our Commission, We do by these presents give and grant unto you or any three or more of you, full power to call before you such persons as you shall judge likely to afford you any information upon the subject of this Our Commission; and also to call for, have access to and examine all such books, documents, registers, and records as may afford you the fullest information on the subject, and to enquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do by these presents authorize and empower you, or any three or more of you, to visit and personally inspect such places as you may deem it expedient so to inspect for the more effectual carrying out of the purpose aforesaid.

94. 3000.—Wt. T.L. 177. 2/06. Wy. & S. 1629r.

And We do by these presents will and ordain that this Our Commission shall continue in full force and virtue and that you our said Commissioners or any three or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We do further ordain that you, or any three or more of you, have liberty to report your proceedings under this our Commission from time to time if you shall judge it expedient to do so.

And Our further will and pleasure is that you do, with as little delay as possible, report to Us under your hands and seals, or under the hands and seals of any three or more of you, your opinion upon the matters herein submitted for your consideration.

Given at Our Court at *St. James's*, the sixth day of *June*, one thousand nine hundred and three, in the third year of Our Reign.

By His Majesty's Command,

A. Akers Douglas.

REPORT.

To the King's most Excellent Majesty.

MAY IT PLEASE YOUR MAJESTY,

WE, the undersigned Commissioners appointed to inquire into the subject of Trade Disputes and Trade Combinations, and as to the law affecting them, and to report on the law applicable to the same, and the effect of any modifications thereof, have the honour to submit to your Majesty our Report.

1. We had first to consider what evidence we should invite to be given before us. After discussion we came to an unanimous conclusion on the following propositions :—

That we were not concerned with the general policy of the law in sanctioning Trade Unions as institutions, but that our business was to take them as they existed.

That the scope of the reference did not suggest any enquiry into the law relating to Trade Combinations known by the name of "Trusts," and other similar combinations.

That as the decisions of the Courts, and especially of the House of Lords, were alleged to have created hardship, which allegation was denied, and as various proposals for the alteration of the law so as to nullify or modify the effects of the said decisions had been mooted, it was right to give those who maintained or denied the said allegations, and who made or opposed the said proposals, an opportunity to be heard before us.

2. We therefore thought it desirable to invite evidence not generally but on certain specific points, and we caused a circular letter to be issued in the following terms :—

* "DEAR SIR—I send herewith the names of the members constituting the above Royal Commission, "and the Terms of Reference.

"I am desired to say that the Commissioners will be glad to receive, in the first instance, "evidence on the following points :—

1. "As to the consequences of the judicial decisions which bear on the subject of Trade "Combinations and the conduct of Trade Disputes, and the status and liability of Trade Unions, "particularly with reference to cases relative to the Trade Union Acts, 1871 and 1876, and the "Conspiracy and Protection of Property Act, 1875, and the Common Law of Conspiracy.

2. "As to any facts of importance in connection with Trade Disputes and Trade Combinations "which have occurred since the Royal Commission on Labour issued their Report in 1894.

"The Commissioners wish to receive evidence on these matters in order to assist them in the "investigation whether any, and if so what, amendment of the existing Law, Civil or Crim- "inal, relating to Trade Disputes and Trade Combinations, is desirable.

"I am desired to ask you whether you would be willing to give evidence on any of the "points above indicated.

"I am, DEAR SIR,
"Yours faithfully,
"HARTLEY B. N. MOTHERSOLE,
"*Secretary.*"

3. These letters were sent to 227 representatives of employers, to 72 leading representatives of Trade Unions, and to 18 other persons who either desired to be heard on specific points, or were known to have expert knowledge of the subject.

* This circular letter was sent out at various dates during August and September, 1903.

4. In response, some 50 representatives of employers volunteered to give evidence in addition to 15 miscellaneous witnesses.

5. While this was the case with the employers of labour, on the other hand we received, with some trifling exceptions, no response from those representing the Trade Unions.

6. The reason for this attitude was due to the following fact: shortly after the announcement of our appointment the matter was discussed by the Parliamentary Committee of the Trade Union Congress, and a resolution was framed that no member of a Union should give evidence before us. This resolution was discussed and adopted by the General Congress of Trade Unions which met in the month of September.

7. We do not think it incumbent on us to discuss or to criticise the reasons which influenced the Trade Union representatives in coming to this decision. It imposed on us the duty of facing the situation with the knowledge that the Trade Unions were of set purpose refusing to assist us in the enquiry which had been committed to us. Our duty to pursue our investigations remained plainly unaffected by the attitude of any society or individual. Nor indeed did the refusal of the Trade Unions to give evidence really involve us in any difficulty, as to discovering what were the objections raised by them to the law as it stood, and what were the proposals acceptable to them for its amelioration. These objections and proposals already stood conspicuously revealed to the world, not only by the reported speeches delivered in the course of their deliberations, but by the Bills introduced avowedly on their behalf in Parliament. During the duration of our sittings these Bills have been re-introduced in successive sessions, and in the debates and discussions arising thereon, we do not hesitate to say that we consider there will be found every possible argument in favour of the proposals there put forward, and that no Trade Union witness, had he come before us, could have added greatly to the case in his favour which from other sources we have already before us.

8. But while this is so with regard to proposed legislation the case is somewhat otherwise as regards the practices prevalent in the practical conduct of strikes, and the effect of the present or proposed state of the law on those practices. On this branch of the subject we do regret the absence of Trade Union witnesses. But as that absence was self-imposed we came clearly to the conclusion that we should not be right on that account to reject the testimony of those who were willing to come. We therefore decided that it was incumbent on us to hear at least a selection of those witnesses who had expressed their willingness to attend.

9. The enquiry even to this limited extent was protracted, but we did our best to narrow its limits both by the terms of the circular already quoted and by steadily refusing to go into such general topics as were covered by the Report of the Royal Commission on Labour, 1894. We also endeavoured to take a fair sample of the various kinds of trades and employment.

10. As we understood we had been selected in respect of our being familiar with the law of the subject we did not think it necessary or advisable to invite the testimony of lawyers generally. We, however, did avail ourselves of the special enquiries which had been made by Mr. Askwith. We desire to take this opportunity of saying how indebted we have been to him for the assistance he gave us; and we recommend his evidence to the perusal of anyone who wishes a clear and exhaustive summary of the whole case law on the matters in question.

11. The main subject of our enquiry may conveniently be divided into three branches: —

A. The liability of Trade Union funds to be taken in execution for the wrongful acts of agents of the Union.

B. The statute law relating to picketing and other incidents of strikes.

C. The law of conspiracy as affecting Trade Unions.

12. The division lines between these branches of the subject are not rigid, and as will be seen the topics with which they deal are interlinked at many points. At the same time we think it will conduce to lucidity to discuss the subject under these three heads. Broadly speaking it may be said that the Trade Unions demand a change of the law in regard to each of them; and further allege that the present state of the law differs from that in the past and is due to the effect of the well-known decisions of the House of Lords in the Taff Vale Case, 1901, A.C. 426, and Quinn v. Leathem, 1901, A.C. 495, and of the Court of Appeal in Lyons v. Wilkins, 1896, 1 Ch. 811, 1899, Ch. 255.

A. The Liability of Trade Union Funds to be taken in Execution for the Wrongful Acts of the Agents of the Union.

13. In the case of the Taff Vale Railway Company, the Amalgamated Society of Railway Servants, being a Trade Union registered under the Trade Union Act 1871, and its officers, were sued by the Taff Vale Railway Company in tort for having conspired to induce the workmen of their company to break their contracts, and also for having conspired to interfere with the traffic of the company by picketing and other unlawful means. Mr. Justice Farwell having granted an interim injunction against all the defendants, the defendant Trade Union appealed on the legal question whether a registered Trade Union was liable to be sued in tort. The Court of Appeal reversed the decision of the Judge, but ultimately the House of Lords restored it, holding that a registered Trade Union could be sued in tort by the name in which it was registered under the Act. The grounds for the judgment were that a registered Trade Union having been invested with the statutory powers of the Act of 1871, it must be legally inferred that it was the intention of Parliament that such Trade Union should be liable to be sued in its registered name. A strong opinion was also expressed by Lord Macnaghten and Lord Lindley that, apart from the Trade Union Act, any Trade Union whether registered or not registered could under the general rules of legal procedure be sued in tort by means of a representative suit, *i.e.*, a suit in which a few members have been selected by the plaintiff to represent all the defendants. The case then went for trial, and verdict was found for the plaintiffs. The damages were assessed (or fixed by agreement) at £23,000, which sum has since been paid out of the Union funds.

14. The judgment of the House of Lords took many by surprise, and Trade Unions protest against it as a decision of Judges making a practically new law against Trade Unions, and nullifying the settlement of their status made by the Legislature in 1871. Bills on their behalf have been introduced into Parliament to alter the law as declared by the House of Lords. These Bills will be found in the Appendix to the Evidence, pp. 7, 8 and 93, but Clause 3 of Mr. Whittaker's Bill of 1905 may be taken as a sample. It is in the following terms:—

> "An action shall not be brought against a trade union, or other association aforesaid for the recovery "of damage sustained by any person or persons by reason of the action of a member or members of such "trade union or other association aforesaid."

It might perhaps be enough, in order to meet the argument, to point out that if liability of Trade Unions in actions of tort can be enforced under the general rules of legal procedure, this shews that such liability must previously have existed. For assuredly those rules did not create any new liability. It may, however, be thought desirable to ascertain from the history of the subject what is the foundation for the belief that Trade Unions were exempt from actions in tort, and, in particular, for the belief that such exemption was secured to them by the Act of 1871.

15. We are satisfied that the law laid down by the House of Lords involved no new principle and was not inconsistent with the legislation of 1871.

16. It is indeed true that that statute did not declare nor has any other statute declared that Trade Unions should be liable to an action in tort, and before the Taff Vale case there is not on record any case, in which the question of the liability of a Trade Union was distinctly raised and in which a Court of Law pronounced a Trade Union liable. But this does not prove that Trade Unions as such possessed any special exemption from actions of tort. On the contrary it cannot be disputed that theoretically the funds of Trade Unions have all along through their members been subject to the general law of

liability. When an individual is cast in an action of tort whatever property he possesses is liable to be attached for payment of damages. In the eyes of the law a Trade Union before 1871 was nothing but an aggregate of individuals: and there never was a time when, if all the individual members had been brought before the court in an action of tort and the tort had been proved against them or their agent, the property of the members, including the union funds which belonged to them, would not have been liable to make good the damage. The union might be an unlawful association, but this would be immaterial. The fact that the wrong was done in pursuance of an unlawful purpose could be no excuse to the tort-feasors, nor any reason why the sufferer should be deprived of redress. This liability of the funds of a Trade Union in an action of tort could at any time have been effectively realised in case of a Trade Union consisting of a very small number of persons. If the liability was not enforced, it was not because Trade Unions were regarded as peculiar institutions outside the law, but simply because of the following reason. An action to recover damages in respect of a tort could be instituted only in the Courts of Common Law, and those Courts, although they did not allow the non-joinder of defendants to be pleaded in such an action either in bar or in abatement, adopted a rigid rule that judgment could not be recovered against any person or persons not named as defendants in the action. From this it followed that no property could be taken in execution which was not the property of the named defendants. If, therefore, an association consisted of so large a number of persons that it was impracticable to ascertain the names of all of them or to make them all defendants, the property of the association, as distinguished from that of the individual members, could not be taken in execution in a Common Law action. The difficulty of course was not confined to cases against Trade Unions: it equally affected cases against clubs and all unincorporated associations with a number of members, and, it may be added; whether the action was in tort or upon contract. The rule that all individuals interested should be before the Court was in itself a just one, but it operated a denial of justice whenever it had to be applied on a scale so large that it was impossible to name all the defendants. This evil was manifestly one that called for a remedy, and in course of time expedients were devised for the purpose. They were chiefly of two kinds. One was incorporation—the creation, by the Legislature or by charter, of corporate bodies in various forms—or the granting by the Legislature to particular bodies of special powers to sue and be sued. The other was a relaxation by the Courts of the rule that all persons interested should be before the Court. When the number of persons was large, a few were allowed to be taken to represent all, and a decision with regard to these few was held binding upon all. This reform of procedure, however, which—as appears from the cases cited in Lord Lindley's judgment in the Taff Vale case—dates so far back as the time of Lord Hardwicke, was only operative in the Court of Chancery, and there was confined to cases of contract, since that Court did not entertain actions for damages in cases of tort. The Common Law Courts which dealt with tort continued to adhere to the ancient rule. It was in consequence of these difficulties in Common Law procedure that in practice Trade Unions continued to be unamenable to actions of tort.

17. It was, however, not only as defendants in actions of tort that Trade Unions were kept out of the Law Courts. They were kept out in other cases and for a different reason. This reason was that before 1871 not only had they no sort of corporate existence at law but they were unlawful, because their purposes were in restraint of trade. In consequence they could neither sue in tort nor sue nor be sued with respect to contract, whether made with members or with others, for any such proceeding would be deemed to be a furtherance of the illegal purposes of the Trade Union. This unlawfulness, as has been already said, would not have been in itself any bar to a Trade Union being sued in tort. But the result was that by a combination of causes the presence of Trade Unions or Trade Unionists, as such, in the Common Law Courts either as plaintiffs or as defendants, either in cases of tort or in cases of contract, was unknown, and to all appearance it was as if they were outside the civil law altogether. Hence the popular notion that Trade Unionists, as such, were subject to the criminal law alone.

18. With this state of affairs Trade Unionists might have been content, but for one thing. They had no protection for funds in case of embezzlement. As unlawful associations they could take no civil proceedings against the wrongdoer, and there were technical difficulties in enforcing the ordinary criminal law. Under these circumstances Trade Unions endeavoured to take advantage of the Friendly Societies Act of 1855, 18 and 19 Vic. c 63, which conferred upon any association not constituted for an illegal purpose a special power to prosecute, and upon the Court of Summary Jurisdiction hearing

the case power, to order the offender on conviction to restore the property and make further compensation up to £20. But in Hornby *v.* Close, L. R. 2 Q. B. 153, tried in 1867, it was decided that a Trade Union by reason of its illegal purposes in restraint of trade was not entitled to benefit by the enactment. The consequence was that Trade Union funds were at the mercy of dishonest officials. An agitation ensued and the particular hardship was temporarily met by the Act of 1869, 32 & 33 Vic. c. 61; but a permanent arrangement was necessary, and the whole question of the civil status of Trade Unions came under review by the Royal Commission which was presided over by Sir W. Erle and which led to the legislation of 1871.

19. We may say at once that there is nothing in the history of that legislation (as distinguished from the words of the Statute) which bears on the subject of the liability of Trade Union funds for tort, but as an argument has been founded on the fact that Parliament abstained from providing for the incorporation of Trade Unions—which, unless qualified, would have made them liable to actions of tort—it may perhaps be convenient that we should describe in some detail the course of proceedings.

20. To begin with the Commission; it heard the Unionists who stated their grievances, but among those grievances was not included the liability of Trade Unions to be sued in tort, because they had never suffered from it. If workmen had been asked whether they were willing that their Unions should be liable to be sued in tort, and their funds taken in execution, they would presumably have objected. As it was, their desire may be generally described to have been a desire to have protection for their funds, but in other respects to be left alone. They wished to have as little to do with the Law Courts as possible.

21. In considering what it should recommend as the status for Trade Unions, the Commission was confronted with this difficulty. If Trade Unions remained unlawful associations, their funds would be without legal protection. If Unions were incorporated, and otherwise altogether legalized, then, as one consequence, the contracts of a Union with its members would be enforceable on either side. This result neither commneded itself to the Commission nor was asked for by any party. Some middle course was necessary. The Commission did not recommend incorporation. The majority recommended a system of registration " which would give to Unions capacity for rights and duties resembling in some degree that of corporations " but which apparently would confer upon them little more than protection to their funds in case of misappropriation, and such registration was to be conditional on the rules of the Trade Union not contemplating certain objects, which, in the opinion of the Commissioners, were reprehensible (*e.g.* rules against non-Unionists). The minority recommended registration for all Trade Unions, not having a criminal object, indiscriminately; such registration to carry with it protection for their funds. The special question of actions of tort, and the practical difficulties, under the then existing system, of enforcing liability against Trade Unions do not seem to have engaged the attention of the Commissioners, or to have been discussed by them. But certainly they did not recommend any exemption from such actions.

22. As the Bill passed through Parliament the question of liability for tort was not raised. The Government in the main followed the recommendation of the minority of the Commission. They proposed a qualified legalisation of Trade Unions (whether of employers or employed). The legalising sections were Sections 2 and 3, 34 & 35 Vic. c. 31—

> "Section ii. The purposes of any Trade Union shall not by reason merely that they are in "restraint of trade be deemed to be unlawful, so as to render any member of such Trade Union "liable to criminal prosecution for conspiracy or otherwise."
>
> "Section iii. The purposes of any Trade Union shall not by reason merely that they are in "restraint of trade be unlawful, so as to render void or voidable any agreement or trust."

And the qualifications on this legislation are to be found in Section 4;

> "Section iv. Nothing in this Act shall enable any court to entertain any legal proceeding "instituted with the object of directly enforcing or recovering damages for the breach of any of "the following agreements, namely:—
>
> "1. Any agreement between members of a Trade Union, as such, concerning the conditions "on which any members, for the time being, of such Trade Union shall or shall not "sell their goods, transact business, employ or be employed."
>
> "2. Any agreement for the payment by any person of any subscription or penalty to a Trade "Union."
>
> "3. Any agreement for the application of the Funds of a Trade Union:—
>
> "(*a.*) To provide benefits to members; or

"(*b.*) To furnish contributions to any employer or workman not a member of such "Union in consideration of such employer or workman acting in conformity with "the rules or resolutions of such Trade Union;

"(*c.*) To discharge any fine imposed upon any person by sentence of a court of justice, "or

"4. Any agreement made between one Trade Union and another; or

"5. Any bond to secure the performance of any of the above-mentioned agreements."

"But nothing in this section shall be deemed to constitute any of the above-mentioned agree-"ments unlawful."

23. The broad effect of this part of the Act is that Trade Unions ceased to be any longer unlawful societies by reason of their purposes being in restraint of trade, and therefore ceased to be under any disability on account of unlawfulness to sue for the protection of their funds: at the same time the Act did not enable any Court *directly* to enforce agreements between a Trade Union and its members, or between one Trade Union and another. The Act said nothing about actions of tort; but one of the results of the statute legalizing Trade Unions, was to enable them to sue others in tort. As to the liability to be sued in tort, this, as has been shown, did not depend on the legality of the Trade Union: and if the general legal procedure permitted, or should come to permit, a Trade Union to be sued in tort, there was certainly nothing in the Trade Union Act to prevent it.

24. The enactment in Section 3 constitutes in effect a special exemption to Trade Unions from certain consequences which might otherwise follow from these purposes being in restraint of trade: it prevents agreements made by or with them being void or voidable. This exemption extended to all Trade Unions, whether registered or non-registered, and was the only advantage conferred by the Act upon unregistered Trade Unions. The Act proceeded to enable a Trade Union at its discretion to register, and on registration such Trade Union became subject to certain regulations, and also entitled to certain advantages. Amongst the advantages was the exclusive right to its registered name. After the passing of the Act, Trade Unions were for some time as little before the Civil Courts as they had been formerly. This was the result partly of Section 4 excluding from the courts cognizance of the contracts in which Trade Unions, whether registered or non-registered, were chiefly interested; partly of Section 9, which provided that all real and personal property of a registered Trade Union should be vested in Trustees who were empowered to bring or defend all actions concerning such property; and partly of the difficulties previously mentioned, arising from the number of members.

25. Turning now for the moment aside from special Trade Union legislation we find that the next step was the amendment of general procedure under the Judicature Acts in 1881. The effect of these Acts was to bridge over the differences between Courts of Common Law and Courts of Equity. All the Courts became divisions of one Court, the Supreme Court, and the distinction was abolished between legal and equitable rules as regards parties to sue and be sued, and in 1883 was issued a General Order, No. 16 of the Supreme Court, Rule 9 of which prescribed that where there are numerous parties having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by a Court or Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

26. This General Order had no special reference to Trade Unions, and, for a time, was not utilised in their case: and, as before, no action was brought against them in tort. But in 1893 occurred the case of "Temperton v. Russell," L.R. 1893, 1 Q.B. 715, in which officials of three Trade Unions were made defendants to represent all the members, and on their objecting, it was held by the Court of Appeal that the Order was not applicable to the case of a Trade Union, because the words of the Order "numerous parties having the same interest in one cause or matter" could only be satisfied by parties who had, or claimed to have, a beneficial proprietary right which they were asserting or defending, and this was not so in the case of a Trade Union. This decision proceeded, it is obvious, on general grounds which had nothing to do with the question whether Trade Unions ought to be exempt from actions in tort. It was a decision of a very high, though not the highest, legal authority that Trade Unions could not be so sued and it was naturally inferred that if they could not be so sued, they could not be sued at all: at that time it had not been suggested that under the Act of 1871, a registered Trade Union could be sued in its registered name.

27. The decision in Temperton *v.* Russell was still in force, when, in 1894, the Royal Commission on Labour delivered their report. Accordingly the Commissioners naturally assumed, that a Trade Union, could not be effectually sued in tort. They did not express any opinion on the question, whether as a matter of principle or expediency Trade Unions ought to be liable to be sued in tort. But an important section of the Commission suggested that the time might come when it might be expedient for a Trade Union of employers and a Trade Union of employed to be able to make with each other binding agreements concerning the terms of employment for a limited period, so that in case of default the funds of the defaulting union should be liable for the damages. And they pointed out that for this purpose two changes in the law would be necessary: (1) a modification of Section 4 of the Trade Union Act, which forbids such agreements from being directly enforced; and (2) a grant to Trade Unions of partial or conditional incorporation so as to remove the difficulty arising from numbers and the want of legal personality.

28. But four of the Commissioners, viz., Mr. Abraham, Mr. Austin, Mr. Maudsley and Mr. Tom Mann further reported generally on the subject of the liability of Trade Unions to be sued either in tort or in contract.

> "One proposal made to the Commission by several witnesses appears to us open to the gravest "objection. This suggestion is, that it would be desirable to make Trade Unions liable to be sued "by any person who had a grievance against their officers or agents. To expose the large amalgamated "societies of the country, with their accumulated funds, sometimes reaching a quarter of a million "sterling, to be sued for damages by any employer in any part of the country, or by any discontented "member or non-Unionist for the action of some branch secretary or delegate, would be a great injustice. "If every Union were liable to be perpetually harassed by actions at law on account of the doings of "individual members; if Trade Union funds were to be depleted by lawyers' fees and costs, if not by "damages and fines, it would go far to make Trade Unionism impossible for any but the most "prosperous and experienced artisans."
>
> "The present freedom of Trade Unions from any interference by the courts of law—anomalous "as it may appear to lawyers—was, after prolonged struggle and Parliamentary agitation, conceded "in 1871, and finally became law in 1876. Any attempt to revoke this hardly won charter of Trade "Union freedom, or in any way to tamper with the voluntary character of their associations, would, "in our opinion, provoke the most embittered resistance from the whole body of Trade Unionists, and "would, we think, be undesirable from every point of view."

This opinion no doubt represents the views of Trade Unionists that Trade Unions ought to be exempt from liability to be sued, but the assumption that such exemption had been obtained by the legislation of 1871, is, as we have shown, mistaken. As regards the Act of 1876 that Act amended the definition of Trade Unions and made some minor changes, but did not touch either status or civil liability.

29. In 1901 the decision in Temperton *v.* Russell came under review by the House of Lords in the case of Duke of Bedford *v.* Ellis and others (L.R. 1901 A.C. 10) which was an action not against Trade Unionists, but against a number of occupiers of premises in Covent Garden Market. The House of Lords overruled Temperton *v.* Russell and held that General Order No. xvi. Rule 9, was universal in its application.

30. Such was the state of the law when the Taff Vale railway case came before the House of Lords in 1901. In the first place, expounding the Trade Union Act 1871, they held unanimously that from the provisions in that Act concerning registered Trade Unions there is to be legally inferred an intention of Parliament that a Trade Union might be sued in tort in its registered name, with the consequence that Trade Unions funds would be liable for any damages that might be awarded. Secondly—apart from the Trade Union Act—Lord Macnaghten and Lord Lindley expressed an unhesitating opinion that under the General Order, No. xvi., as interpreted in "Duke of Bedford *v.* Ellis," any Trade Union, whether registered or not, could be sued in tort by means of a representative action.

31. We have given this detailed narrative in order to throw light upon two questions—how it came about that Trade Unions did so long enjoy a practical immunity from actions of tort, and what are the circumstances which induced the notion so generally entertained that this immunity had been secured by the Act of 1871 as a privilege of Trade Unions. But when the circumstances come to be sifted, it is manifest that—with the exception of the comparatively recent decision in Temperton *v.* Russell, which, though delivered in a Trade Union case, was on a point of general procedure having no special reference to Trade Unions, and which is now proved to have been erroneous; and with the exception of the assumptions of the Royal Commission on Labour 1894, which were based

on that decision—no assurance of such immunity has ever been held out; no public Commission as a body has represented that they ought to be exempt; no Government has promised that they would be exempt by forthcoming legislation; and no judge has pronounced that they are exempt. In short, it turns out that the notion of a Trade Union having been intended to be specially exempted from actions of tort is a mere misconception resting on no other foundation than long practical immunity, which was simply the result of defects in general legal procedure that have now been remedied on general considerations of equity quite irrespective of Trade Unions and Trade Union law. And the Taff Vale case shows that, even if the rules of general legal procedure were not available in case of Trade Unions, nevertheless under the Act of 1871 registered Trade Unions would be liable to be sued in tort.

32. It remains now to consider the question on the ground of justice and equity, and here the objections against disturbing the law as laid down in the Taff Vale case appear insurmountable. There is no rule of law so elementary, so universal, or so indispensable as the rule that a wrong-doer should be made to redress his wrong. If Trade Unions were exempt from this liability they would be the only exception, and it would then be right that that exception should be removed. That vast and powerful institutions should be permanently licensed to apply the funds they possess to do wrong to others, and by that wrong inflict upon them damage, perhaps to the amount of many thousand pounds, and yet not be liable to make redress out of those funds would be a state of things opposed to the very idea of law and order and justice.

33. On what grounds can such a claim be supported? Trade Unions which originally were looked upon as illegal combinations have made out their claim to enfranchisement and existence. But having done so they cannot put their claims higher than to say that they are institutions which are beneficial to the community as a whole. But so are many other institutions—banks, railways, insurance companies, and so on. It may have been right to provide, as has been done, that the Courts shall not have power directly to enforce agreements between Trade Unions and their members in the same manner as they can in the case of shareholders and policy holders in the institutions above mentioned. But when Trade Unions come in contact by reason of their own actions with outsiders, and *ex hypothesi*, wrong those outsiders, there can be no more reason that they should be beyond the reach of the law than any other individual, partnership or institution. Such a claim has indeed in former times been made by the spiritual as against the civil authority, and has been consistently disallowed. What was denied to religion ought not in our judgment to be conceded to Trade Unionism.

34. In the discussion thus far it has been necessarily made matter of assumption that the Trade Union has done some act from which a liability to pay damages ensues: or, in other words, that having so acted any association other than a Trade Union would be liable. It is thus at once apparent how Branches B and C of the subjects we have laid down for discussion are interlinked with Branch A, because the practical as distinguished from the theoretical liability of Trade Union funds will largely depend on the law as to Branches B and C. Before, however, we pass to the consideration of these subjects, there is something to be said on two other topics, viz., the law of agency and the position of benevolent funds.

35. The torts in respect of which Trade Unions may be sued are necessarily torts committed by agents, for Trade Unions, like all other aggregate bodies, can only act by means of agents. There are certain principles of the law of agency which are of general application, and will be found to apply to Trade Unions just as they do to all other persons or bodies. In all cases the plaintiff who seeks to render the principal liable for the tort committed by the agent has to prove (1) that a wrong was done to him; (2) that the wrong doer was an agent; and (3) that the agent, in doing the wrong, acted within the scope of his employment.

36. These three matters depend in one sense on questions of fact, and as facts infinitely vary it is obviously impossible antecedently to set forth what facts will and what will not constitute liability. But in regard to (2) and (3)—for as to (1) no comment is required—it is obvious that Trade Unions are in a somewhat peculiar position in two respects. The first is as regards what are known as their "Branches,"

which are often in a semi-independent position to the Union as a whole or its Central Executive. It is not unnaturally looked on as a hardship that the funds of the whole Union may be rendered liable by the unauthorised act of some Branch Agent. We recommend that means shall be furnished whereby the Central Authorities of a Union may protect themselves against unauthorised and immediately disavowed actions of Branch Agents. The other consists in the fact that registered Trade Unions are, though not incorporated, held liable as if they were incorporated. The principles governing the application of the rules of agency to bodies so constituted have been carefully stated in the case of Denaby *v.* Yorkshire Miners' Association (Appendix to Report p. 66), and we are of opinion that Trade Unions would have no just ground of complaint if the law is applied to them strictly in accordance with the principles there laid down. We are, however, divided in opinion whether it is possible or expedient to endeavour to embody these principles in a statutory enactment, and therefore refrain from making any recommendation on this point.

37. As regards non-registered Trade Unions, they have not yet been made the subject of a legal decision, but we conceive that the funds can be made liable only by means of a representative action, and it follows that two conditions must be satisfied in order to make those funds liable for the acts of agents :—(1) Such agents must be persons who can properly be considered to be the agents of all the members, and must be acting within the scope of their agency; (2) the funds must be property which would have been taken into execution or attached in an action in which all the members had been made defendants.

38. Although Unions may exist for the purposes, *inter alia*, of a benefit society, the funds of the Union for whatever purpose are in law a massed fund, and as such liable to be taken into execution in accordance with the principles above laid down. It is often represented that this is a great hardship on those who have contributed to the benefit funds, and that this hardship is not lessened by the prevalent though erroneous belief that Trade Union funds were immune from outside attack. To separate the funds under the law as it at present stands would require a very elaborate scheme of trust. We think such separation should be made easier by statutory enactment. The Chairman and Mr. Cohen consider that, in accordance with the views already expressed, such separation would have to be accompanied by the condition that the funds so separated should not be available for what may be termed militant as distinguished from purely benevolent purposes. In other words, they would have to be confined to sick, accident, and superannuation funds, and not extend to out of work funds. Mr. Webb thinks that the definition of the Trade Union (Provident Funds) Act, 1903, should be followed with the object of placing out of work funds in the same position.

39. We have discussed the question so far historically and upon its merits, but apart from evidence as to the effect of the Taff Vale judgment. As we have pointed out, the evidence on the question of effect has only been proffered on the employers' side. So far as it is concerned it is practically unanimous, and asserts clearly that the effect of the judgment has been to make Trade Unions much more careful than heretofore in seeking not to infringe the law : with the result that strikes have been less frequent, that in the conduct of trade disputes there has been less violence and intimidation, and that the disputes themselves have been easier to settle than was the case before the law was authoritatively laid down.

B.—The Statute Law relating to Picketing and other incidents of Strikes.

40. We have made use of the term "picketing" because although it is not a legal term—not being defined in any statute—it is well understood, and much controversy turns on the methods of picketing to be employed. At the same time we propose to discuss under this head the various offences which have been created by the law in order to protect persons from intimidation, molestation, etc. In this case also we think it expedient to preface our remarks by a short historical retrospect.

41. Sir James Stephen, in the third volume of his History of the Criminal Law, gives an interesting summary of the history of offences relating to trade and labour. He explains the common law and the statute law against engrossing, forestalling and regrating—laws which were evidently opposed to "a free course of trade," so far, at

least, as this depends upon unrestrained competition and speculation. The learned author then gives an account of the long series of enactments passed against combinations of workmen, whether for raising wages, or for any other purpose. Until very recent times it was considered the special duty of the legislature, whether in the interests of the wage-earners, or in those of the employers or consumers, to prescribe the rate of wages and other conditions of employment. In fact, for a very considerable period, a workman's wages and hours of work were fixed by Acts of Parliament or by justices of the peace. All agreements and combinations of workmen for advancing wages or lessening their usual hours of work were not only declared to be null and void, but were made criminal offences subject to severe punishment.

42. In 1824 by 5 Geo 4. c. 95 the combination laws were all repealed. The legislature, however, thought that having done so it would not be safe to leave the law standing on common law and statutory indictable offences such as assault, etc., but proceeded to enact that certain acts of coercion as well as combinations to commit them should be criminal offences summarily punishable.

43. The Act of 5 Geo. 4 c. 95 only stood for one year and was replaced by the Act of 1825. This Act, 6 Geo. 4 c. 129, also made certain specified acts, many of which were and some of which were not indictable at Common Law, punishable by a Court of Summary Jurisdiction. It prohibited, without defining, molestation and obstruction, and under this head and also under the head of Common Law conspiracy to injure, workmen were in Reg. *v.* Rowlands, 1851, 17 Q. B. Ad. E. 671 (*see* Appendix to Report, p. 49) convicted of an offence, although what they had done was by way of peacefully persuading. In consequence it was, by the Amending Act of 1859, 22 Vic. c. 34, provided that (in the cases in which combination was permitted by Statute) no person should by reason merely of his endeavouring peaceably, and in a reasonable manner, and without threats or intimidation, direct or indirect, to persuade, etc., be deemed guilty of molestation or obstruction within the meaning of the said Act of 1825, or should therefore be subject to a prosecution or indictment for conspiracy.

44. The Act of 1859 was in its turn replaced by the Criminal Law Amendment Act, 1871 (*see* Appendix to Report, p. 35), which repealed the Acts of 1825 and 1859, and by Section 1 made it penal to molest or obstruct any person, in manner defined by the section, with a view to coerce such person, etc.: and the definition was that a person is to be deemed to molest or obstruct another if he watch or beset the house or other place where such person resides or carries on business, or happens to be, or the approach to such house or place. No exception was made in favour of watching or besetting with a view to obtaining or communicating information or peacefully persuading: but in 1875 (before the passing of the Conspiracy, etc., Act, 1875), in the case of workmen being charged with conspiracy to molest Mr. Graham and others in their business of cabinet makers, Mr. Russell Gurney, the Recorder of London, in effect charged the Grand Jury not to bring in a true Bill, if all that the pickets had done was to peacefully persuade. (R. *v.* Hibbert, 1875, 13 Cox, C.C. 82: *see* Mr. Askwith's evidence, Question 104).

45. Next came the Act of 1875, The Conspiracy and Protection of Property Act, 38 & 39 Vic. c. 86, which repealed the Act of 1871. That Act is the now existing Act, and Section 7 is in the following terms:—

> "Section vii. Every person who, with a view to compel any other person to abstain from doing or to "do any act which such other person has a legal right to do or abstain from doing, wrongfully and with- "out legal authority,—
>
> "1. Uses violence to or intimidates such other person or his wife or children, or injures his property; or,
>
> "2. Persistently follows such other persons about from place to place; or,
>
> "3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
>
> "4. Watches or besets the house or other place where such other person resides, or works, or carries on business or happens to be, or the approach to such house or place; or,
>
> "5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,
>
> "shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter men- "tioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a "term not exceeding three months, with or without hard labour."
>
> "Attending at or near the house or place where a person resides, or works, or carries on business, or "happens to be, or the approach to such house or place, in order merely to obtain or communicate "information, shall not be deemed a watching or besetting within the meaning of this section."

46. This, it will be observed, made it penal to watch or beset, etc., the house with the qualification that attending merely to communicate or obtain information should not be deemed watching or besetting. As the Bill passed through Parliament the Government was pressed to insert words putting peaceful persuasion on the same footing as communicating and obtaining information, but they refused on the groun td hat it was implied by the terms of the Bill. (*See* Mr. Askwith's evidence, Question 104). After the Act had passed, a case, Reg. *v.* Bauld, 1876, 13 Cox 282, came before the Court, and in the course thereof it was ruled that watching and besetting for any other purpose than that of obtaining or communicating information was forbidden, and therefore that watching or besetting for the purpose of peacefully persuading was an offence. The same result was come to in the decision of the authoritative case of Lyons *v.* Wilkins. 1896, 1 Ch. 811, 1899, Ch. 255. It is sometimes represented that workmen are thus punished for merely peacefully persuading. (*See* Appendix to Evidence, p. 9, Letter to M.P.'s from Trade Union Congress Parliamentary Committee.) But this is not so. No workman has ever been punished under this Act for merely peacefully persuading. What he has been punished for is watching or besetting a house, etc., with the view of peacefully persuading—a different matter. Before he can be convicted or punished it has to be proved that he watched or beset the house; and also that he did so to compel, though compelling may, in the case supposed, mean little more than persuading persons to do what without such persuasion they might not be willing to do.

47. The proposal made on this matter by the Trade Unions may be taken to be embodied in Clause 1 of Mr. Whittaker's Bill of 1905, which is in these terms :—

> "Clause i.—It shall be lawful for any person or persons acting either on their own behalf or on "behalf of a trade union or other association of individuals, registered or unregistered, in contem- "plation of or during the continuance of any trade dispute, to attend for any of the following "purposes at or near a house or place where a person resides or works, or carries on his business, or "happens to be—
>
> "(1) for the purpose of peacefully obtaining or communicating information;
>
> "(2) for the purpose of peacefully persuading any person to work or abstain from working."

48. Such an enactment would go further than the mere insertion of what the Government of 1875, as above stated, understood was already done, because it is not an amplification of the proviso, but a positive enactment giving a right to attend. The proposal would, in fact, legalise the attendance of any number of persons for the specified purpose, although the attendance might be such as to constitute a nuisance, or a trespass. But the real objection lies deeper. The evidence on this matter laid before us is on this point really overwhelming, and is evidence which the Trade Unions have made no attempt to contradict. What it comes to is this, that *watching and besetting* for the purpose of peaceably persuading is really a contradiction in terms. The truth is that picketing—however conducted—when it consists of watching or besetting the house, etc., and it is to be observed that the statute places no limit to the number of persons attending for the purpose only of obtaining or communicating information or to the length of time during which such attendance may be maintained—is always and of necessity in the nature of an annoyance to the person picketed. As such, it must savour of compulsion, and it cannot be doubted that it is because it is found to compel that Trade Unions systematically resort to it. It is obvious how easy it must be to pass from the language of persuasion into that of abuse, and from words of abuse to threats and acts of violence. A considerable proportion of the cases of physical violence which occur during times of strike arise directly or indirectly out of picketing. At the same time all the witnesses admitted that the real vice of picketing consisted in illegal intimidation, that is to say, in producing in the mind of a person apprehension that violence would be used to him or his wife or family or damage be done to his property, and some witnesses thought that picketing by one or two persons could not produce any injurious effect. It must be remembered that, if picketing amounts to a nuisance, it can be restrained by injunction, and that a Trade Union which authorises the nuisance can be made liable in a civil action. Moreover, the consideration that the right to strike, which, when not accompanied by breach of contract, tort, or crime, is legal, and indeed is conceded by nearly all employers to be within the rights of workmen, carries with it in our judgment as a corollary the right to persuade others to do the same. We therefore think that this right could be safeguarded, and at the same time the oppressive action of picketing struck at if the watching-besetting clause

(1) [illegible]

with its proviso were struck out, and instead thereof another Sub-section (which would also supersede Sub-section 1) inserted "acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his wife or family, or damage be done to his property."

C.—The Law of Conspiracy as affecting Trade Unions.

49. The subject of the law of conspiracy is peculiarly intricate: and it is probably impossible to reconcile the opinions and dicta which have been pronounced by judges and writers of authority on the matter. The remarks which we shall make cannot be authoritative and are not intended to be exhaustive, but they will be sufficient, we hope, to indicate the bearing of the subject on the question referred to us.

50. The nature of a criminal conspiracy at common law is described in the following well-known passage from the opinion of the Judges delivered by Willes J. in Mulcahy *v.* Reg. 1868 L.R 3H.L 317 :—

> "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or "more to do an unlawful act or do a lawful act by unlawful means. So long as such a design rests in "intention only it is not indictable. When two *agree* to carry it into effect, the very plot is an act in "itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being "enforced if lawful, punishable if for a criminal object, or for the use of criminal means."

A more definite statement of the law is to be found in the Report of the Royal Commission of 1874, of which L. C. J. Cockburn, Sir Montague Smith, and Mr. Russell Gurney were members :—

> "Conspiracy may be divided into three classes. First, where the end to be accomplished would "be a crime in each of the conspiring parties, a class which offers no difficulty. Secondly, where the "purpose of the conspiracy is lawful, but the means to be resorted to are criminal, as where the "conspiracy is to support a cause believed to be just by perjured evidence. Here, the proximate or "immediate intention of the parties being to commit a crime, the conspiracy is to do something criminal, "and here, again, the case is consequently free from difficulty. The third and last case is, where, with "a malicious design to do an injury, the purpose is to effect a wrong, though not such a wrong as "when perpetrated by a single individual would amount to an offence under the criminal law. Thus, "an attempt to destroy a man's credit and effect his ruin by spreading reports of his insolvency would "be a wrongful act, which would entitle the party whose credit was thus attacked to bring an action "as for a civil wrong; but it would not be an indictable offence. If it be asked on what principle a "combination of several to effect the like wrongful purpose becomes an offence, the answer is—upon "the same principle that any other civil wrong, when it assumes a more aggravated and formidable "character, is constituted an offence, and becomes transferred from the domain of the civil to that "of the criminal law. All offences, it need hardly be observed, are either in their nature offences "against the community, or are primarily offences against individuals. As regards the latter class "every offence against person or property or other individual right, involves a civil wrong, which "would have entitled the person injured to civil redress, were it not that, owing to the aggravated "nature of the wrong, and the general insecurity to society which would ensue from such act if "allowed to go unpunished, the State steps in and, merging the wrong done to the party immediately "interested in the larger wrong done to the community, converts the wrong done by the infraction "of individual right into a crime, and subjects the wrong-doer to punishment, to prevent, as far as "possible, the recurrence of the offence. Thus the dividing line between private wrongs, as entitling "the party injured to civil remedies, and private wrongs thus converted into public wrongs, in other "words, into offences or crimes, is to be found in the more aggravated and formidable character "which the violation of individual rights under given circumstances assumes. It is upon this "principle that the law of conspiracy, by which the violation of private right, which if done by one "would only be the subject of a civil remedy, when done by several is constituted a crime, can be "vindicated as necessary and just. It is obvious that a wrongful violation of another man's right "committed by many assumes a far more formidable and offensive character than when committed by "a single individual. The party assailed may be able by recourse to the ordinary civil remedies to "defend himself against the attacks of one. It becomes a very different thing when he has to defend "himself against many combined to do him injury. To take the case, put by way of illustration, that "of false representations made to ruin a man's business by raising a belief of his insolvency. Such "an attempt made by one might be met and repelled. It would obviously assume very different "proportions and a far more formidable character if made by a number of persons confederated "together for the purpose, and who should simultaneously, and in a variety of directions, take measures "to effect the common purpose. A variety of other instances illustrative of the principle might be put. "The law has, therefore, and, as it seems to us, wisely and justly established that a combination of "persons to commit a wrongful act with a view to injure another shall be an offence, though the act, "if done by one would amount to no more than a civil wrong. We see no reason to question the "propriety of the law as thus established, nor have we any reason to believe that in its general "application it operates otherwise than beneficially. Whether there are cases in which, on a correct

"view of the law, parties may be held liable on a charge of conspiracy, where the end is not wrongful, "or the means to be used criminal, is a matter into which we do not think it necessary to enquire, as, "if such be the law, which we greatly doubt, we are prepared, as we shall state further on, to recommend "that as respects the contract of hiring and service, and the relation of master and servant the "law should be amended."

51. Previous to 1871 the Courts had in certain cases (of which R. *v.* Rowlands, App. to Report, p. 49 is an example) in applying the law of conspiracy, treated, as criminal combinations, ordinary strike proceedings which did not involve the commission of anything, which, if done by one person, would be forbidden by either the criminal or the civil law. Such proceedings, workmen represented, ought not to be considered criminal. Parliament, accepting this view of the workmen, endeavoured to meet it by the Criminal Law Amendment Act of 1871 (see App. to Report, p. 35), but this expedient failed, as is shown by the Gas Stokers Case, R. *v.* Bunn (see App. to Report, p. 53).

52. We refer to what we have already said upon the history of the repeal of the combination laws, and the enactment by the legislature of specific offences summarily punishable. In 1875 the Government of the day resolved in framing the Act of that year to deal with the law of conspiracy so far as it affected Trade Unions, and to apply a more drastic remedy than that which had failed in 1871, by declaring that a combination to do, or procure to be done, any act in contemplation or furtherance of a Trade Dispute between employers and workmen should not be indictable as a conspiracy, if such act committed by one person would not be a crime punishable with imprisonment. This policy of the Act of 1875 was explained by the responsible promoters of the measure in terms which are unmistakable. Earl Cairns, who was then Lord Chancellor, in the debate which took place on the Act of 1875, Conspiracy and Protection of Property Act 38 and 39 Vic. c. 86, when it was in Committee in the House of Lords, is reported in "Hansard," Vol. 226, p. 164, to have said:—

"The Bill did make a change in the existing law, and, the clause now under consideration was in har- "mony with the other parts of the measure. Taken in connection with the following clauses, the Bill at- "tempted to define what acts connected with trade disputes were criminal and what were not—therefore it "recited all acts relating to trade disputes which were intended to be treated criminally, and "it sets those acts out. On the other hand it declared by this clause that an agreement by two or "more persons to do what would not be a crime if done by one person was not to be punished as a "crime; but by the next clause intimidation and annoyance by violence was struck at, and it was "declared that every person who with a view to compel any other person to abstain from doing, or to "do, any act which such other person had a legal right to do or to abstain from doing, should use "violence or intimidation either to his person, or his wife or children, or his property, should be liable "on conviction to a pecuniary penalty or to imprisonment. By this clause, then, intimidation was "struck at, and combined action to carry out such intimidation would therefore be struck at. It was "true that, under the existing law, if one man broke his contract that would not be a crime, while "if say—fifty—broke their contract, that at common law might be regarded as a conspiracy. Under "this Bill it would not be a conspiracy. The principle upon which the Bill was framed was that the "offences in relation to trade disputes should be thoroughly known and understood, and that persons "should not be subjected to the indirect and deluding action of the old law of conspiracy."

53. There can, therefore, be no doubt as to the evils at which the Act of 1875 was aimed. It was considered that the Common Law relating to criminal conspiracies was in many respects vague and uncertain, and that workmen were justified in demanding that the law as to their liability in connection with strikes and disputes should be made clear, precise, and definite. Such being the object of the legislature, it was deemed expedient to enact, as is done in the third section, that:—

"An agreement or combination by two or more persons to do or procure to be done any act in con- "templation or furtherance of a trade dispute between employers and workmen shall not be indictable "as a conspiracy if such act committed by one person would not be punishable as a crime."

This enactment has made it perfectly clear in what cases combinations to do acts in furtherance or contemplation of trade disputes between employers and workmen involve criminal responsibility. It is clear that, subject to certain exceptions specified in the Statute, no combination to commit any act, which, if done by one person would not be an offence punishable by imprisonment, can be the foundation of criminal proceedings.

54. The civil action of conspiracy differs in this respect from the criminal, that the conspiracy is not complete by mere agreement, but must result in something being done from which damage results in order that the action may lie.

55. For the reasons which we gave in our treatment of Branch A, no one was during the discussion of the Bill of 1875, thinking of the civil action. It is, however, evident that the authoritative exposition of the law in the Taff Vale case, makes the subject of the civil action of supreme importance.

56. The importance of the subject was brought to the front by the decision in the House of Lords of the case of Quinn v. Leathem, L.R. 1901 AC 495. The facts of that case were as follows :—

The plaintiff, Leathem, master butcher, sued the defendants, Trade Unionist officials (Craig being the president, Quinn, the treasurer) for damages for procuring persons to break contracts and not to enter into contract with him; and for procuring workmen in the employment of such persons to leave the service of their employers and to break their contracts of service, with intent to injure the plaintiff and to prevent such persons from carrying out their contracts with the plaintiff and from entering into other contracts with him; and for intimidating such servants and coercing them to leave the service of their employers to the injury of the plaintiff; and for unlawfully *conspiring* together with others to do the acts aforesaid with intent to injure the plaintiff. The plaintiff was a butcher at Lisburn, about eight miles from Belfast; he employed non-Unionists only. He had for foreman a man who had been with him ten years, and he himself had for twenty years been in the habit of supplying meat to Munce, a butcher in Belfast, to the value of £30 a week on the average. Munce employed Unionists. The defendants were butchers' assistants in Lisburn and Belfast. In the spring of 1895, the defendants formed themselves into a Trade Union, and one of the rules was that they would not work with non-Union men or cut up meat that came from a place where non-Union men were employed. In July of the same year the defendants required the plaintiff to dismiss his foreman. The plaintiff negotiated on behalf of his foreman and his men, and offered to pay all fines against them and asked to have them admitted to the society. The defendants rejected this proposal, saying that the plaintiff's men should be punished and should be put to walk the streets for twelve months. The plaintiff refused to comply with defendants' demand, thereupon the defendants called on some of his men to leave him, but as they were non-Unionists the Union could do no more than induce one of them to leave. This, however, was in breach of contract. They then demanded of Munce to discontinue taking meat from plaintiff, with "threat" of a strike against him (in the nature of a secondary strike). Munce complied, to the great loss of the plaintiff. The "threats" which the Unionists sent during the negotiations were, to the plaintiff, "If you continue as at present our Society will be obliged to adopt extreme measures in your case," and to Munce: "We have endeavoured to make satisfactory arrangements [with Leathem], but have failed, so therefore have no other alternative but to instruct your employees to cease work immediately Leathem's beef arrives."

The case began in 1896, when the decision of the Court of Appeal in "Flood *v.* Jackson," had not yet been reversed on appeal (as "Allen v. Flood)"), and was in force as a binding authority. The defendants did not call witnesses. The Jury found that the defendants had "wrongfully and maliciously" induced the customers and servants of the plaintiffs to refuse to deal with the plaintiffs, and had conspired to induce them so to do. Verdict accordingly was given for the plaintiffs, and the defendants moved for judgment to be entered in their favour on the ground that no actionable wrong had been shown on the evidence. The motion came on for hearing in November, 1898, after the adjudication of "Allen *v.* Flood," by the House of Lords. The Queen's Bench Division, and the Court of Appeal unanimously (with the exception of Palles C.B. in the Court below) upheld the verdict, holding that the rule laid down in "Allen *v.* Flood," that an act of harm, if not unlawful in itself, did not become unlawful, because done with a bad motive, did not apply to the case of a combination. The case then went to the House of Lords who unanimously affirmed the decision of the Court below. The Law-lords unanimously held that the terms of the Conspiracy, etc., Act, Section 3, which exclude indictments for conspiracy left unaffected the civil remedy for Conspiracy, and they found that in the case before them the defendants were civilly liable as for Conspiracy.

57. Throughout these remarks we have assumed that it is not for us to discuss the status or privileges of Trade Unions so far as they rest on Parliamentary sanction. It may be a question whether the enactment in Section 3 of the Act of 1875, Conspiracy and Protection of Property Act 1875, is in truth correctly expressed; whether in truth an act done by a combination of persons can ever be the same as an act done by one. There, however, the matter stands, and it is not doubtful that it represents a concession to Trade Unions, whose chief strength must necessarily lie in collective action.

58. The danger to Trade Unions consists not so much in the judgment of Quinn *v.* Leathem as in the possible expansion of the judgment by the application of the dicta of certain of the Law-lords who took part in it. In Quinn *v.* Leathem there was the element of procuring to break contract. But to break a contract is to involve liability for damages, and the procuring to break a contract is itself a tortious act. Lumley *v.* Gye, 2 E and B 216. We are aware that Lumley *v.* Gye has been much discussed, but we consider it has been authoritatively affirmed as good law by the recent judgment of the House of Lords in The Glamorgan Coal Co. (Ltd.) and others *v.* The South Wales Miners' Federation and others, 1905, A.C. 239. But the dicta of Quinn *v.* Leathem show clearly that there might be an action of damages based on any conspiracy to injure or to do harm, and it is obvious the very essence of a strike is in one sense

injury to those against whom it is directed. Thus, procuring to strike might by the law of Quinn *v.* Leathem, coupled with that of Taff Vale, involve Trade Union funds in liability, even where there had been no procuring to break existing contracts.

59. There is no doubt that though the law of conspiracy is intricate in discussion, the existence of a criminal sanction for conspiracy is a valuable preservative of order, and modern times have shown that there are certain forms of oppression generally known as boycotting which can scarcely be met except by its aid. Whether there can truly be a civil action for conspiracy, on facts which fall short of criminal conspiracy, is a question which cannot be said to be settled. We have carefully considered the matter, and our view is in the negative. We have annexed to the Report (p. 20) a separate memorandum on the subject. But we do not think it material to discuss the question at length, because as we have already shown, the Legislature has thought fit to put those who conduct trade disputes in an exceptional position as regards that law.

60. We think therefore that without attempting to touch the law of conspiracy generally, it would be reasonable to recognize that, by the Act of 1875, it was conceded that Trade Unions, who necessarily act by means of combination, should for the purposes of Trade Disputes be put in a special position.

For the reasons already given the protection conceded was at that time confined to the criminal side. We think it can fairly be said that the civil side should be equally dealt with.

61. The proposal of the Trade Unions may be taken as embodied in Clause 3 of Mr. Whittaker's Bill of 1905, which is as follows :—

> "Clause 3. An agreement or combination by two or more persons to do or procure to be done "any act in contemplation or furtherance of a trade dispute shall not be ground for an action if such act, "when committed by one person, would not be ground for an action."

We think this would be better effected by an enactment to the following effect :—

> "That an agreement or combination by two or more persons to do or procure to be done any act "in contemplation or furtherance of a trade dispute shall not be the ground of a civil action unless the "agreement or combination is indictable as a conspiracy notwithstanding the terms of the Conspiracy "and Protection of Property Act, 1875."

62. It is to be observed that in the above proposed amendment we have omitted after the words "trade dispute" the words between "employers and workmen" which are to be found in Section 3 of the Act of 1875. Our reason for so doing is that in "Quinn *v.* Leathem" the House of Lords expressed their opinion that the third section of the Act of 1875 would in the case before them have afforded no exemption from criminal liability because the acts of the defendants were not acts within the terms of the statute in contemplation or furtherance of a trade dispute between employers and workmen. Their Lordships did not offer any definition of what are acts in contemplation or furtherance of a trade dispute between employers and workmen; and though the acts done by the defendants are detailed in the evidence and commented upon by the Court it is difficult to collect which of those acts taken separately failed to come within the statutory description, so as to form any guide for future cases, where, of course, the circumstances will be different. It seems to us that the Act when construed in accordance with the decision of the House of Lords has failed in giving effect to the intention of Parliament in 1875. The Legislature at that time we cannot doubt had for their cardinal object to eliminate the vague and uncertain operation of the Law of Conspiracy from all disputes between employers and workmen arising out of strikes and similar combinations, and the words they used for this purpose are not "between employers and workmen in their employ," but, "between employers and workmen."

For these reasons we are also of opinion that the Act of 1875 should be made to extend to so-called secondary strikes, and we state this with the greater confidence because the majority of those employers examined by us, whose evidence was of the greatest weight, agreed that there was no valid reason for drawing a distinction between secondary and other strikes.

63. We have now finished our observations on the three branches into which for convenience of discussion we divided the subject. There remain, however, one or two topics of a general nature. It must always be remembered that Trade Unions materially suffer from the fact that at common law they are illegal associations, and are only, so to speak, enfranchised so far as the words of the Statute go. Their present

enfranchisement depends on the words of Sections 2 and 3 of the Trade Union Act of 1871, 34 and 35 Vic. c. 31, which are as follows:—

> Section 2, "The purposes of any Trade Union shall not by reason merely that they are in restraint "of trade be deemed to be unlawful so as to render any member of such Trade Union liable to criminal "prosecution for conspiracy or otherwise."
>
> Section 3, "The purposes of any Trade Union shall not by reason merely that they are in restraint "of trade be unlawful so as to render void or voidable any agreement or trust."

We think that it might be declared by Statute positively that Trade Unions themselves are lawful associations.

64. In the same way it was to say the least of it doubtful whether a strike is at common law *per se* illegal, *i.e.*, as concerted action. We think that Allen *v.* Flood, 1898, A.C. 1, authoritatively showed that a strike was not illegal, and that it follows as a corollary that to persuade to strike, *i.e.*, to desist from working, *apart from breach of contract*, is not illegal. We think this also might be statutorily declared. We are also of opinion for reasons stated in an appendix that Allen *v.* Flood decided that no action lies against a person for the act of molesting another in his trade, business, or profession, unless such act be in itself an actionable tort; and as there are several dicta throwing doubt on this point we think there should be a declaratory enactment to that effect.

65. A good deal of evidence was laid before us from no unfriendly point of view to Trade Unions that it would be of great advantage that Trade Unions should be able to enter into binding agreements with Associations of Employers, and with their own members to enable them to carry out their agreements. At present this is impossible owing to the terms of Sec. 4 of the Trade Union Act of 1871. We think that facultative powers might be given to Trade Unions, either (*a*) to become incorporated subject to proper conditions, or (*b*) to exclude the operation of Sec. 4 or of some one or more of its Sub-sections for the purposes above mentioned.

66. Our recommendations may be summarised as follows:—

That an Act should be passed for the following objects:—

(1) To declare Trade Unions legal associations.

(2) To declare strikes from whatever motive or for whatever purposes (including sympathetic or secondary strikes), apart from crime or breach of contract, legal, and to make the Act of 1875 to extend to sympathetic or secondary strikes.

(3) To declare that to persuade to strike, *i.e.*, to desist from working, *apart from procuring breach of contract*, is not illegal.

(4) To declare that an individual shall not be liable for doing any act not in itself an actionable tort only on the ground that it is an interference with another person's trade, business, or employment.

(5) To provide for the facultative separation of the proper benefit funds of Trade Unions, such separation if effected to carry immunity from these funds being taken in execution.

(6) To provide means whereby the central authorities of a Union may protect themselves against the unauthorised and immediately disavowed acts of branch agents.

(7) To provide that facultative powers be given to Trade Unions, either (*a*) to become incorporated subject to proper conditions, or (*b*) to exclude the operation of Section 4 of the Trade Union Act, 1871, or of some one or more of its Sub-sections, so as to allow Trade Unions to enter into enforceable agreements with other persons and with their own members.

(8) To alter the 7th Section of the Conspiracy and Protection of Property Act, 1875, by repealing Sub-section 4 and the proviso, and in lieu thereof enacting as a new Sub-section (which would also supersede Sub-section 1): "Acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his family, or damage be done to his property."

(9) To enact to the effect that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be the ground of a civil action, unless the agreement or combination is indictable as a conspiracy notwithstanding the terms of the Conspiracy and Protection of Property Act, 1875.

67. We cannot conclude our Report without expressing our obligation to our Secretary, Mr. Hartley B. N. Mothersole, for his unvarying attention and assiduity in the performance of his duties, and for the very able assistance he has given us throughout our inquiry.

All which is humbly reported by

(Signed) DUNEDIN.
ARTHUR COHEN.
SIDNEY WEBB.

HARTLEY B. N. MOTHERSOLE,
Secretary.

January 15th, 1906.

MEMORANDUM BY MR. SIDNEY WEBB.

I have signed the Report of the Majority of the Commission because I agree with all its specific recommendations as far as they go, though not with every phrase in the report itself. These recommendations appear to me well adapted to remedy the particular defects in the law to which they apply; and their enactment in distinct and unmistakable terms would, in my opinion, remedy many of the grievances of which Trade Unionists complain, and would effect a great improvement.

With regard to suggested limitation of the liability of Trade Unions for the wrongful acts of their agents, I think that attention should be drawn to the following clause, which was contained in a Government Bill submitted to the New South Wales Legislative Council on October 1st, 1903, by the then Attorney-General (Hon. Beruhard Wise), intituled "A Bill to amend the law of Conspiracy and to amend the Industrial Arbitration Act, 1901."

Union or Association not liable for certain acts of its agents.

Clause 2.—No Trade Union or Industrial Union or Association of Employers shall be liable to any suit or action, nor shall the funds of such Union or Association be in any way chargeable in respect of any act or word, done, spoken, or written, during or in connection with an industrial dispute, by any agent, if it be proved that such agent acted:—

(i). contrary to instructions *bona fide* given by, or

(ii). without the knowledge of

The Governing Body of such Union or Association; and that the Union or Association has *bona fide* and by all reasonable means repudiated the acts or words complained of, at the earliest opportunity and with reasonable publicity.

But I cannot accept the assumption underlying the Report that a system of organised struggles between employers and workmen, leading inevitably now and again to strikes and lock-outs—though it is, from the standpoint of the community as a whole, an improvement on individual bargaining—represents the only method, or even a desirable method, by which to settle the conditions of employment. A strike or a lock-out—which is not only lawful, but under existing circumstances, as a measure of legitimate defence against economic aggression, may be sometimes even laudable—necessarily involves so much dislocation of industry; so much individual suffering; so much injury to third parties, and so much national loss, that it cannot, in my opinion, be accepted as the normal way of settling an intractable dispute. Moreover, from the standpoint of the community, such a method has the drawback that it affords no security—and even no presumption—that the resultant conditions of employment will be such as not to be gravely injurious to the community as a whole: that they will not involve, for instance, on the one hand, the social degeneration of "sweating," or on the other the loss caused by restriction of output or of apprenticeship. I cannot believe that a civilised community will permanently continue to abandon the adjustment of industrial disputes—and incidentally the regulation of the conditions of life of the mass of its people—to what is, in reality, the arbitrament of private war.

A more excellent way is, I believe, pointed out in the experimental legislation of the past decade in New Zealand and Australia. We have in the factory, mines, shops and sanitary legislation of the United Kingdom, long adopted the principle of securing, by law, the socially necessary minimum, as regards some of the conditions of employment for certain classes of labour. The various industrial conciliation and arbitration laws of New Zealand and Australia carry this principle a step further, so as to include all the conditions of employment and practically all classes of labour. Such a system appears to offer, to the general satisfaction of employers and employed, both a guarantee against conditions of employment that are demonstrably injurious to the community as a whole, and an effective remedy for industrial war.

(Signed) SIDNEY WEBB.

NOTE ON THE MOGUL CASE BY THE CHAIRMAN WITH NOTE APPENDED BY MR. ARTHUR COHEN.

There is no doubt that it has been often said that the Mogul case gave to employers a freedom of attack which was denied to workmen by Quinn *v.* Leathem. The facts in Quinn *v.* Leathem are given in the body of our Report.

The facts in the Mogul case, 23 Q.B.D. 614, and 1892, App., Cas., p. 25 are, as given by Mr. Askwith in his evidence, as follows :—

"The defendants were ship-owners, and formed an association for the purpose of securing a monopoly of the carrying trade between Hankow and European ports. In pursuance thereof they offered a rebate of 5 per cent. to all shippers who should ship only with them; and their members were to forbid their agents upon pain of dismissal, to act for the plaintiffs, who were a competing firm of ship owners. In one case certain agents were dismissed. Upon the plaintiffs sending ships to Hankow, the defendants underbid them, and by the consequent reduction of freights, forced the plaintiffs to carry at a loss. Held unanimously by the House of Lords, that the plaintiffs had no cause of action."

The acts of offering a rebate and underselling do not suggest any difficulty, but at first sight doubtless, the forcing of the dismissal of the agents bears a strong similarity to the act of the forcing of the dismissal of the servants in Quinn *v.* Leathem, which act was held as indication of a conspiracy to injure.

This fact of the dismissal of the agents does not seem to have attracted notice at first, for it is not noticed in either the report of the argument or the judgment in the Court of Appeal. So far, therefore, as the oft-quoted judgment of Lord Justice Bowen is concerned the fact must be taken as unassumed.

But in the House of Lords the fact was relied on by counsel in argument, and it is noticed in the judgments.

Lord Watson said :—

"The withdrawal of agency at first appeared to me to be a matter attended with difficulty, but on consideration I am satisfied that it cannot be regarded as an illegal act. In the first place it was impossible that any honest man could impartially discharge his duty of finding freights to parties who occupied the hostile position of the appellants and respondents; and in the second place the respondents gave the agents the option of continuing to act for one or other of them in circumstances which placed the appellant at no disadvantage."

Lord Morris said :—

"The fifth means used, *viz.*, the dismissal of the agents might be questionable according to the circumstances, but in the present case the agents filled an irreconcileable position in being agents for the two rivals, the plaintiffs and the defendants."

From these remarks it is, I think, apparent that the dismissal of the agents in the Mogul case was not looked upon as *on the facts* an ultroneous attack like the withdrawal of Munce's workmen if he took Leathem's beef. In my judgment this view of the facts was right, but it would not matter if it was not so—the point being that on the facts held as proved, and, therefore, assumed in the application of the law, the case is not inconsistent with what the House of Lords afterwards laid down in Quinn *v.* Leathem.

(Signed) DUNEDIN.

NOTE BY MR. ARTHUR COHEN.

I agree, for the reason stated in the Chairman's Note as well as for other reasons, that the decision of the House of Lords in the Mogul case is not inconsistent with the decision in Quinn *v.* Leathem.

(Signed) ARTHUR COHEN.

MEMORANDUM ON THE CIVIL ACTION OF CONSPIRACY.

BY MR. ARTHUR COHEN, CONCURRED IN BY LORD DUNEDIN, SIR GODFREY LUSHINGTON, AND MR. SIDNEY WEBB.

I propose in this Appendix to discuss the question in what cases a civil action of conspiracy can be maintained.

If a person is a party to a conspiracy or combination to do acts causing injury to another person and those acts are in themselves actionable torts, there the injured person can evidently maintain an action quite apart from conspiracy; he can maintain it against anyone who is a party to the conspiracy, and the non-joinder of the other parties to it cannot be pleaded either in bar or in abatement. For instance, if two or more persons conspire to assault, and do assault, another person, the latter can maintain an action for such assault against any one who committed the assault or who joined in and authorised it, and the allegation of conspiracy in the statement of claim is mere surplusage, except so far as it may affect the amount of damages to be recovered. In those cases, therefore, conspiracy is not the foundation of the action. Herein lies the essential distinction between an action and a criminal prosecution.

In a well known passage from the opinion of the judges delivered by Willes, J., in *Mulcahy* v. *Reg.* 1868, L.R., 3 H.L. 317, the character of a criminal conspiracy is described in the following terms:—

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two *agree* to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced if lawful, punishable if for a criminal object, or for the use of criminal means."

In the case of a civil action the position is entirely different, for such an action cannot be maintained merely because the combination or conspiracy has been formed; it is necessarily a condition precedent to the right of action that the tortious act itself should have been committed and that the actual damage or injury should have accrued.

There may be, however, cases where the combination or conspiracy to injure is itself a misdemeanour, although the acts agreed to be done are neither actionable torts nor criminal offences; for instance those in which there is a conspiracy to injure such as is not protected by the provisions of the Conspiracy and Protection of Property Act 1875.

In those cases a civil action can be maintained by the injured person. Thus Coleridge, L.C.J., says in the Mogul case at page 549 of 21, Q.B.D.

"If the combination is unlawful, then the parties to it commit a misdemeanour, and are offenders against the State; and if, as the result of such unlawful combination and misdemeanour, a private person receives a private injury, that gives such person a right of private action."

Again in the same case in the Court of Appeal, Fry, L. J., says at page 624 of 23, Q.B.D.:—

"I cannot doubt that whenever persons enter into an agreement which constitutes at law an indictable conspiracy, and that agreement is carried into execution by the conspirators by means of an unlawful act or acts which produce private injury to some person, that person has a cause of action against the conspirators."

In such cases it *may* be said that the conspiracy, which is the misdemeanour, is the ground of the civil action. These, however, are the only cases in which it can, in propriety, be said that a civil action can be maintained for conspiracy. There is abundant authority in proof of this proposition. The principal authorities are the judgment of Lord Holt in *Saville* v. *Roberts*, I. Lord Raymond, 374, the notes to *Skinner* v. *Gunton*, reported in I. William Saunders, 269, the judgment of Coleridge, L.C.J., in the Mogul case, 21, Q.B.D., 547, and the cases therein cited by his Lordship, also the judgments in the same case in the Court of Appeal, and in the House of Lords in 23, Q.B.D., 598 and 1892, A.C. 25, finally the judgments in the *Scottish Co-operative Society* v. the

Glasgow Fleshers Association, 35 Scotch L.R., 645, and in *Kearney* v. *Lloyd*, 26 Ir., L.R. 268, and the judgment of Lord Esher in *Salaman* v. *Warner*, 7 *Times* Law Reports p. 485.

It will be enough to cite passages from one or two of these judgments. In *Kearney* v. *Lloyd*, Palles, C.B. (p. 280) says :—

"It anything is well settled in law, it is that in cases of this description (*i.e.*, so-called actions for conspiracy) in which the old writ of conspiracy did not lie, the gist of the action is not the conspiracy itself, but the *wrongful acts* done in pursuance thereof. *The cause of action must exist, although the allegation of conspiracy be struck out.*"

Again, in the Mogul case, which was an *action for conspiracy*, Lord Bramwell, in delivering his opinion in the House of Lords, said it was not enough for the plaintiffs to make out that the agreement was illegal, that is, not enforceable by law. *To maintain their action on this ground* (*i.e.*, conspiracy) *they must make out that it was an offence, a crime, a misdemeanour.*

In the same case the Lord Chancellor said (p. 40 of 1892, A.C.) :—

"I ask myself whether, if the indictment had set out the facts using the ambiguous language to which I have referred in the statement of claim, it would have disclosed an indictable offence."

It is difficult to see how this question could be material except upon the assumption that the civil action for conspiracy upon which the statement of claim was founded, was not maintainable unless the conspiracy was criminal.

Again, in *Salaman* v. *Warner*, a case unconnected with trade disputes, and involving the general common law of conspiracy, Lord Esher says, at p. 484 of *The Times* Law Reports :—

"It is not true to say that a civil action could be brought for a conspiracy. If persons conspired to do an illegal thing, or to do a legal thing in an illegal way, they are liable to an indictment and not to an action. They are only liable to an action if they conspired to do something against the rights of the plaintiffs, and have effected their purpose and committed a breach of those rights. The plaintiff, therefore, must show that the conspiracy was to injure his rights, and that those rights had been injured. He has, in fact, to carry his case as far as if there were no conspiracy at all. The fact of there having been a conspiracy did not increase his right of action in the least, though it did not diminish it."

Finally, there is on this point the well-known authoritative statement in the note to *Skinner* v. *Gunton*, I. William Saunders, p. 229 b. (4), 230 :—

"A writ of conspiracy, properly so called, did not lie at common law in any case, but where the conspiracy was to indict the plaintiff either of treason or felony, and he had been acquitted of the indictment by verdict, and such writ could only be brought against two at least. All the cases of conspiracy, called in the old books writs of conspiracy, are in truth nothing else but actions on the case, and not properly writs of conspiracy, though in most, if not all of them, it was usual to insert the words *per conspirationem inter eos habitam*, and these actions it was always held might be brought against one person only. Those words inserted in the writ or declaration do not convert the action into a formed action of conspiracy, but it is nevertheless an action upon the case, and those words are mere surplusage intended as matter of aggravation, and therefore not necessary to be proved to support the action."

Such are the numerous authorities in support of the view I am contending for ; but there is one case that has been frequently cited in support of the opposite view. It is *Gregory* v. *The Duke of Brunswick*, and another 6 M. & G., 205 and 953, also 6 Scott, N.R., 807.

This case, therefore, requires to be carefully examined. The declaration stated in effect that the defendants, maliciously intending to injure and aggrieve the plaintiff, and to oppress, impoverish, and ruin him, wickedly and maliciously conspired together to prevent the plaintiff from performing in the character of Hamlet, and in pursuance of the said conspiracy hired a number of persons to hoot and hiss him, *and to make a great uproar and riot at and against the plaintiff*, and thereby compelled the plaintiff to discontinue acting, and in consequence the plaintiff sustained damage.

The defendants pleaded a plea of justification, as to so much of the grievances as related to the *hooting, hissing, and making* a great uproar at and against the plaintiff.

To this plea there was a special demurer.

The counsel for the plaintiff in the course of his argument cited a note of the Reporter to the case of *Clifford* v. *Brandon*, 2 Camp. 372, which stated that Macklin, the comedian, indicted several persons for a conspiracy to ruin him in his profession, that they were tried before Lord Mansfield, and it being proved that they had entered into a plot to hiss him as often as he appeared on the stage, they were found guilty under his Lordship's direction. On this note being cited, Maule, J., said :—

"This is very like the present case."

In other words, the declaration set forth a criminal conspiracy. In fact, it is evident that a combination to create *a riot* in a theatre or in any other place is a combination to commit a misdemeanour, and therefore a criminal conspiracy.

Tindal, C. J., in delivering judgment against the validity of the plea, said :—

"Every plea which is not in denial of the charge must be in confession and avoidance of the whole or some part of the declaration. Here the defendants single out an overt act of the conspiracy and attempt to justify it. The charge of conspiracy and some of the overt acts remain unanswered."

The case afterwards came on for trial before the Chief Justice. The plaintiff rested his case entirely on the conspiracy. The Chief Justice left it to the Jury to say whether what took place in the theatre was the result of a preconcerted arrangement between the defendants and other persons in the theatre.

The jury found for the defendants.

The plaintiff moved for a new trial on the ground of misdirection, the misdirection being that the Lord Chief Justice omitted to tell the Jury that either of the defendants might be found guilty, although the other were acquitted, and told them that unless there was a conspiracy between the defendants they ought to find for the defendants.

The report of the case on this point is at p. 953 of 6 M. & G.

The counsel for the plaintiff argued that there were many cases showing a civil action for conspiracy was in reality an action of tort, and would therefore lie, though only one person was guilty.

It was held by the Court (p. 958–959) that, as the plaintiff's counsel, although he considered the action was capable of being sustained against one of the defendants alone, yet thought it more for the interest of his client not to advert before the Jury to that view of the case, but on the contrary to make out a case of conspiracy against both the defendants, he was not entitled to a new trial on the ground that the Lord Chief Justice had not made out a case for the plaintiff which his counsel had purposely declined to make.

This part of the judgment was as follows :—

"It might be true in point of law that on the declaration as framed, one defendant might be convicted, although the other was acquitted, but, whether, as a matter of fact, the plaintiff was, under the circumstances entitled to a verdict against one of the defendants alone, was a very different question. It was to be borne in mind that the act of hissing in a public theatre is *prima facie* a lawful act, and even if it should be conceded that such an act, though done without concert with others, if done from a malicious motive might furnish a ground of action, yet it would be very difficult to infer malice from isolated acts of one person unconcerted with others."

When the plaintiff thought proper to rest his case wholly on proof of conspiracy the judge (as the Court proceeded to say), was well warranted in treating the case as one in which unless the conspiracy was established, there was no ground for saying that the plaintiff was entitled to a verdict.

I submit, with great deference to those who have expressed a contrary opinion, that a careful examination of the judgments in *Gregory* v. *The Duke of Brunswick* shows that the case is no authority for the proposition that an action can be maintained for a conspiracy where the conspiracy is not a misdemeanour. As before observed, the Declaration alleged amongst other things a combination to create a riot in a theatre, which is in itself a combination to commit a misdemeanour. Moreover, if this be not the true view of the Declaration, it undoubtedly alleged a conspiracy to ruin the plaintiff in his profession by hissing him off the stage, and this was, whether rightly or wrongly assumed, in accordance with a ruling of Lord Mansfield, to be a criminal conspiracy.

Finally, even if *Gregory* v. *Duke of Brunswick* did, as I venture to deny, contravene the proposition for which I am contending, that case which was decided many years ago would be inconsistent with the numerous authorities cited at the beginning of this paper.

There are two other cases which have been cited to show that an action can be maintained for a conspiracy which is not a criminal conspiracy; namely, *R.* v. *Parnell* 14 *Cox C.C.* 508, and *Barber* v. *Lesiter*. 7 C.B.N.S., 175.

As regards the former case, it was an action for a criminal conspiracy, and has therefore nothing to do with the question now under consideration. As regards the other case *Barber* v. *Lesiter*, it will be found on a careful examination that the declaration would at law have been equally good if all the statements about conspiracy were struck out, and that the only point actually decided was that it appeared on the face of the declaration that the damages were too remote.

For all these reasons I submit that at common law a combination to do any acts cannot be made the subject of a civil action, unless such acts would, apart from the conspiracy, give a right of action, or unless the combination be a criminal conspiracy. In short, conspiracy cannot be the foundation of a civil action unless it be a criminal conspiracy.

If this view be correct, then the decision in *Quinn* v. *Leathem* that the Act of 1875 did not affect any civil liability which existed previously, although it may be the result of a proper construction of the statute, would manifestly introduce an anomaly into our law. It has been seen that the question whether a civil action of conspiracy is maintainable is material only in those cases where the act in itself is not a tort and would not give a right of action. Now it is *exactly* in those cases that the action of the common law relating to criminal conspiracy is, to use the language of Earl Cairns, "indirect and

deluding," and it is for this reason that the legislature passed the Act of 1875 with a view to prevent its application to disputes between workmen and their employees. It is for the very same reason equally important that it should be excluded from civil liability in disputes between employers and workmen.

Finally, I would observe that nothing which I have said affects the question of political boycotting, for nothing that I have urged impugns in the slightest degree or is intended to throw any doubt whatever on the proposition that in all cases, where boycotting or any other act or agreement intended to cause injury is a misdemeanour or criminal offence a civil action can be maintained by the injured person.

MEMORANDUM ON "ALLEN *v.* FLOOD" [1898. A.C. 1].

BY

BY MR. ARTHUR COHEN, CONCURRED IN BY LORD DUNEDIN, SIR GODFREY LUSHINGTON, AND MR. SIDNEY WEBB.

It has been in effect recommended in our Report that a combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be ground for an action, if such act, when committed by one person, would not be ground for an action. Moreover, it is enacted by the Conspiracy and Protection of Property Act 1875, that a similar combination shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime. It follows that the only remaining subject to be considered is that of non-criminal torts committed by *one* individual. In connection with this subject, there is, since the unanimous confirmation of *Lumley* v. *Gye* in the House of Lords, only one legal question of any importance or difficulty. It is this: Is a person liable for doing any act which, though not in itself an actionable tort, amounts to an interference with or molestation of another person in his trade, business or employment?

I propose to show that since the decision of *Allen* v. *Flood*, and also independently of that decision and on general principles of law, this question must be answered in the negative.*

The facts which gave rise to the case of *Allen* v. *Flood* are for the present purpose sufficiently stated in the head note which is as follows:—

"The respondents were shipwrights employed for the job on the repairs to the woodwork of a ship, but were liable to be discharged at any time. Some ironworkers who were employed on the ironwork of the ship objected to the respondents being employed, on the ground that respondents had previously worked at ironwork on a ship for another firm, the practice of shipwrights working on iron being resisted by the trade union of which the ironworkers were members. The appellant, who was a delegate of the union, was sent for by the ironworkers and informed that they intended to leave off working. The appellant informed the employers that unless the respondents were discharged, all the ironworkers would be called out or knock off work (it was doubtful which expression was used) that the employers had no option, that the ironmen were doing their best to put an end to the practice of shipwrights doing ironwork, and that wherever the respondents were employed the ironmen would cease work. There was evidence that this was done to punish the respondents for what they had done in the past. The employers, in fear of this threat being carried out which (as they knew) would have stopped their business, discharged the respondents and refused to employ them again. In the ordinary course the respondents' employment would have continued. The respondents having brought an action against the appellant the jury found that he had maliciously induced the employers to discharge the respondents and not to engage them, and gave the respondents a verdict for damages."

The statement of claim contained, amongst other counts, one charging conspiracy, but the learned judge who tried the case ruled that there was no evidence to support that charge, and no objection was taken to this ruling. Therefore all that was said in the judgments in *Allen* v. *Flood* about conspiracy and about *Temperton* v. *Russell* and other cases turning on conspiracy were entirely immaterial to the decision. There were also counts charging illegal intimidation, coercion and threats, and also one alleging that the defendants maliciously and wrongfully induced the Glengall Company to break their contracts with the plaintiffs; but as regards those two counts the learned Judge who tried the case ruled that there was no evidence to support these charges (see 1898 A.C. p. 3).

The only count on which the plaintiffs were left to rely, and the only one on which their counsel asked the judge to leave questions to the jury was one alleging that—

"The defendants maliciously and wrongfully and with intent to injure the plaintiffs procured the Glengall Company to discharge them and not to enter into new contracts with them."

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* On the subject of *Allen* v. *Flood*, see the questions put to Mr. Askwith and his answers at pages 17, 51, 52, and 56 of the Evidence in the Appendix.

Thus, Lord Macnaghten, at p. 148, sums up in the following clear and terse language the character of the allegations in the Statement of claim and the evidence in support of them :—

" In the statement of claim there were serious allegations for which, as it turned out, there was no foundation whatever in fact. It was alleged that Allen and his co-defendants had induced the Company to break contracts with the plaintiffs. That was a mistake : there was no contract to break. It was alleged that Allen and his co-defendants had conspired against the plaintiffs. That was a mistake too ; there was not, as the learned judge said, ' a shred of evidence of any conspiracy at all.' Then there was a charge of intimidation and coercion. That charge vanished too. The only reference the learned judge made to it was to say : ' There is no evidence here, of course, of anything amounting to intimidation or coercion in any legal sense of the term.' The case as launched broke down."

On the argument in the House of Lords the learned Counsel for the plaintiffs contended (*see* p. 8 of 1898 A.C.) first, that the defendants obstructed and interfered with the plaintiff's trade and employment and means of livelihood and that this was an unlawful act, and secondly, that if it were lawful it would be made unlawful, if done from a desire to punish the plaintiffs from any motive which imported malice.

As regards the second contention which, indeed, was inconsistent with the judgment of the Court of Exchequer Chamber in *Stevenson* v. *Newnham*, 13 C.B. 285, it was distinctly overruled by the House of Lords in *Allen* v. *Flood*. Lord Lindley even says in the following passage from his judgment in *Quinn* v. *Leathem*, that this was the *only* important point decided in that case :—

" This decision, as I understand it, establishes two propositions : one a far reaching and extremely important proposition of law, and the other a comparatively unimportant proposition of mixed law and fact, useful as a guide, but of a very different character from the first. The first and important proposition is that an act otherwise lawful, although harmful, does not become actionable by being done maliciously in the sense of proceeding from a bad motive, and with intent to annoy or harm another. This is a legal doctrine, not new or laid down for the first time in *Allen* v. *Flood ;* it had been gaining ground for some time, but it was never before so fully and authoritatively expounded as in that case."

The same view of the decision in *Allen* v. *Flood* was taken by Lord Brampton in *Quinn* v. *Leathem*, and in fact since the decision in the former case no one has ever expressed any doubt that the law on this point is correctly laid down in the following clear and powerful passage from the judgment of Lord Watson at p. 92 :—

" Although the rule may be otherwise with regard to crimes, the law of England does not, according to my apprehension, take into account motive as constituting an element of civil wrong. Any invasion of the civil rights of another person is in itself a legal wrong, carrying with it liability to repair its necessary or natural consequences, in so far as these are injurious to the person whose right is infringed, whether the motive which prompted it be good, bad, or indifferent. But the existence of a bad motive, in the case of an act which is not in itself illegal, will not convert that act into a civil wrong for which reparation is due. A wrongful act, done knowingly and with a view to its injurious consequences, may, in the sense of law, be malicious ; but such malice derives its essential character from the circumstances that the act done constitutes a violation of the law. There is a class of cases which have sometimes been referred to as evidencing that a bad motive may be an element in the composition of civil wrong ; but in these cases the wrong must have its root in an act which the law generally regards as illegal, but excuses its perpetration in certain exceptional circumstances from considerations of public policy. These are well known as cases of privilege, in which the protection which the law gives to an individual who is within the scope of these considerations consists in this —that he may with immunity commit an act which is a legal wrong and but for his privilege would afford a good cause of action against him, all that is required in order to raise the privilege and entitle him to protection being that he shall act honestly in the discharge of some duty which the law recognises, and shall not be prompted by a desire to injure the person who is affected by his act. Accordingly, in a suit brought by that person, it is usual for him to allege and necessary for him to prove an intent to injure in order to destroy the privilege of the defendant. But none of these cases tend to establish that an act which does not amount to a legal wrong, and therefore needs no protection, can have privilege attached to it ; and still less that an act in itself lawful is converted into a legal wrong if it was done from a bad motive.

The second point strenuously contended for by the plaintiff's counsel was, that to molest a person in his business or employment without reasonable cause or justification was an actionable tort. For this purpose they cited the old cases of *Keeble* v. *Hickeringill* 11, East, 574n ; and *Carrington* v. *Taylor* 11, East, 571, and the judgments of the Court of Appeal in *Bowen* v. *Hall*, 6 Q.B.D. 333, and they further strongly relied on a passage in Lord Justice Bowen's judgment in the Mogul case, in which, after explaining that there can be no actionable tort without the violation of a legal right, his Lordship proceeded as follows :—

" No man, whether trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction, and molestation are forbidden ; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it."

As regards *Keeble* v. *Hickeringill*, *Carrington* v. *Taylor*, and *Bowen* v. *Hall*, I venture to assert that those cases were distinctly overruled by the majority of the Lords, if or so far as they decided that to obstruct a person in his trade by any act not in itself unlawful was an actionable tort. The correctness of this assertion can, of course, be tested in no other way than by a careful perusal of the judgments of the majority of the Lords

who took part in the decision. It will be sufficient to cite the following passages from the opinions delivered by the majority of the Lords.

At page 101 Lord Watson says :—

"In *Keeble* v. *Hickeringill* (1) the plaintiff sued for the disturbance of a decoy upon his property, which he used for the purpose of capturing wild fowl and sending them to market. The defendant, who was an adjoining proprietor, had fired guns upon his own land, not with the view of killing game or wild fowl, but with the sole object of frightening the birds, and either driving them out of his neighbour's decoy pond or preventing them from entering it. The act complained of was, in substance, the making of a noise so close to the lands of the plaintiff as to be a nuisance to him. Upon that aspect of the case I do not find it necessary to express any opinion as to the conduct of the defendant; but this much is clear, that no proprietor has an absolute right to create noises upon his own land, because any right which the law gives him is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public. If he violates that condition he commits a legal wrong, and if he does so intentionally he is guilty of a malicious wrong, in its strict legal sense. Holt C.J., who delivered the opinion of his Court, treated the case as one of interference with the plaintiff's trade, consisting in the capture and sale of wild fowl. He distinguishes it from the case of invading a franchise, which, I apprehend, would in itself amount to a legal wrong, and thus states the law applicable to it: 'Where a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood, there an action lies in all cases.' I see no reason to doubt that by a 'violent act' the learned judge had in view an act of violence done in such circumstances as to make it amount to a legal wrong; and I see as little reason why, in speaking of a 'malicious act,' he should not be understood as using the word 'malicious' in its proper legal sense, and as referring to other wrongs, not accompanied by violence, but done intentionally, and, therefore, in the eye of the law, maliciously. The object of an act, that is, the results which will necessarily or naturally follow from the circumstances in which it is committed, may give it a wrongful character, but it ought not to be confounded with the motive of the actor. To discharge a loaded gun is, in many circumstances, a perfectly harmless proceeding; to fire it on the highway, in front of a restive horse, might be a very different matter.

"The learned Chief Justice proceeds to give various illustrations of the general rule which he had formulated. He first notices a case in which it had been held that a schoolmaster had no cause of action against a defendant who had attracted his pupils and injured his school by setting up a rival establishment, a proceeding which was obviously in the ordinary course of competition, and then adds: 'But suppose Mr. Hickeringill should lie in the way with his guns, and fright the boys from going to school, and their parents would not let them go thither; sure that schoolmaster might have an action for the loss of his scholars.' From that observation I see no reason to differ, because, in my opinion, frightening a child with a gun so that it cannot get to school is in itself a violent and unlawful act, directed both against the child and its schoolmaster. The learned judge then refers to three instances in which the defendant would be liable in an action upon the case: (1) where he obstructs a person in charge of a horse, who is taking it to a market for sale, and prevents his reaching the market, thereby depriving the market owner of his dues; (2) where, to the detriment of a proprietor, he by threats frightens away his tenants-at-will; and (3) when he beats a servant, and so hinders him from taking his master's tolls. It must be observed that, apart from any question of motive, all these cases involve the use of means in themselves illegal—obstruction, coercion by means of threats, and personal assault.

"But assuming, what to my mind is by no means clear, that *Keeble* v. *Hickeringill* (1) was meant to decide that an evil motive will render unlawful an act which otherwise would be lawful, it is necessary to consider how far that anomalous principle has been recognised in subsequent decisions. Laying aside the recent decisions which are under review in this appeal, only one case has been cited to us in which the Court professed that they were guided by the reasoning of Holt C.J. That instance is to be found in *Carrington* v. *Taylor* (1), a decision which I venture to think that no English Court would at this day care to repeat. The facts of the case resembled those which occurred in *Keeble* v. *Hickeringill* (2) in this single respect, that the plaintiff was the owner of a decoy for wild fowl. The defendant was the owner of a boat in which he rowed along the coast and earned a livelihood by shooting wild fowl for the market, which he was lawfully entitled to do. But some of the shots fired by him in the pursuit of that occupation had the effect of scaring birds which otherwise would or might have entered the plaintiff's decoy; and, in respect of that disturbance, he was held liable in damages to the plaintiff. Whatever construction might be put upon the judgment of Holt C.J., it does not appear to me to contain a single expression which would justify that result. I am not surprised to find that an eminent judge, with whose opinion as a whole I am unable to concur, has had the courage to express his dissent from the judgment in *Carrington* v. *Taylor* (1), as he failed to see what wrong the defendant in that case had done. To my mind the case is of considerable importance, because it shows that in the year 1809 the Court of Queen's Bench did not regard *Keeble* v. *Hickeringill* (2) as establishing the doctrine that a lawful act, done with intent to injure, will afford a cause of action. In the case before them there was no allegation and no evidence of any intent to injure the plaintiff's decoy. The sole motive of the defendant in firing his gun was to earn his livelihood by killing wild fowl for the market. I cannot avoid the conclusion that the learned judges accepted *Keeble* v. *Hickeringill* (2) as an authority to that effect that, apart from any question of motive, the disturbance of a lawful decoy is an illegal invasion of the private right of its proprietor."

"A variety of well-known cases, including even *Lumley* v. *Gye* (1), were relied on by the respondents as showing that the so-called principle of *Keeble* v. *Hickeringill* (2) has been from time to time applied by the English Courts since the date of that judgment. Except in the case of *Carrington* v. *Taylor* (3), which I have already noticed, I have been unable to discover in these authorities, which I do not consider it necessary to examine in detail, any trace of the doctrine for which the respondents contend until recent years, when it is first firmly foreshadowed in a dictum which occurs in *Bowen* v. *Hall* (4), and is subsequently developed in *Temperton* v. *Russell* (5) and in the present case. The authorities antecedent to *Bowen* v. *Hall* (4), as well as that decision itself, are all cases belonging to one or other of these three classes: (1) cases of privilege, where the perpetrator of an act which *per se* constituted a legal wrong was protected from its usual consequences in the event of its being proved that he was actuated by an honest desire to fulfil a public or private duty; (2) cases in which the act complained of was in itself a plain violation of priv te right; and (3) cases in which an act detrimental to others, but affording no remedy against the immediate actor, had been procured by illegal means."

At page 132 Lord Herschell says :—

"It was contended that the defendant by the course he took had interfered with the plaintiffs in their trade or calling, and that this of itself was an actionable wrong. In support of this very broad proposition reliance was mainly placed on the case of *Keeble* v. *Hickeringill* (1). The declaration charged the defendant with firing a gun with design to damnify the plaintiff, and frighten the wild fowl from his decoy. In one report (2) it is stated that the plaintiff was lord of a manor, and had a decoy, and the plaintiff had also made a decoy upon his own ground, which was next adjoining the defendant's ground, and there the plaintiff had decoy and other ducks, of which he made profit. It was held that the action lay. In another report (3) this observation is attributed to Lord Holt : 'Suppose defendant had shot in his own ground, if he had occasion to shoot it would have been one thing, but to shoot on purpose to damage the plaintiff is another thing, and a wrong.' In another report (1) Lord Holt is reported as saying : 'The action lies, for, first, using or making a decoy is lawful ; secondly, this employment of his ground for that use is profitable to the plaintiff, as is the skill and management of that employment.' It is argued that this decision rests upon the principle that intentional interference with the trade of another is wrongful. If it was intended by the decision to draw a distinction between firing by the defendant on his own land when the decoy was kept by the plaintiff for purposes of trade profit, and doing the same act when the decoy was kept for purposes of pleasure only, I can see no ground for such a distinction. The defendant in firing upon his own land in such a way as to frighten the birds from the plaintiff's land, was either acting within his own rights or not. If he was not, he would surely be liable, whether the plaintiff was using his land for pleasure or profit. If he was within his rights he would not be liable in either case, and I do not see how his rights could depend on the circumstances that the plaintiff traded in ducks and did not merely use his decoy for purposes of sport, or that he sold them, and did not merely use them for consumption by his household. I cannot think that the right of action depended on the circumstances that the plaintiff traded in ducks, or that there would have been no right of action, all other circumstances being the same, if he had not done so. The case may be supported, and the observation of Lord Holt, which has been quoted, explained by the circumstance that if the defendant merely fired on his own land in the ordinary use of it, his neighbour could make no complaint, whilst, if he was not firing for any legitimate purpose connected with the ordinary use of land, he might be held to commit a nuisance. In this view of it *Keeble* v. *Hickeringill* (1) has, of course, no bearing on the present case.

"It is, however, treated in their opinions by the majority of the learned judges as establishing the wide and far-reaching proposition that every man has a right to pursue his trade or calling without molestation or obstruction, and that anyone who by any act, though it be not otherwise unlawful, molests or obstructs him is guilty of a wrong unless he can show lawful justification or excuse for so doing.

"The case of *Keeble* v. *Hickeringill* (1) was decided about two centuries ago, but I cannot find that it has ever been treated, unless it be quite recently, as establishing the broad general proposition alleged. No such proposition is to be found stated, so far as I am aware, as the ground of any decision, or in any standard text-book of the English law. In Smith's Leading Cases, which were selected, and the notes on which were written by one of the most eminent lawyers of his day, the case of *Keeble* v. *Hickeringill* (1) is not even referred to. And the first editors of the work, after Mr. J. W. Smith's death, Willes and Keating JJ., lawyers on whose eminence it is unnecessary to dilate, equally passed it by without notice. If the view taken by the majority of the learned judges whose opinions were given at the bar be correct, *Keeble* v. *Hickeringill* (1) ought to have been itself treated as a leading case.

"It has not, as I believe, been an authority on which subsequent decisions have been based, except in cases relating to the disturbance of decoys of wild birds. It is, nevertheless, suggested by the learned judges that it embodies the principle on which many subsequent cases have been decided, though it was not referred to, and the judges who pronounced the judgments were apparently unconscious of the authority they are said to have followed.

"It is remarkable that amongst these cases are *Lumley* v. *Gye* (2) and *Bowen* v. *Hall* (3), which I have already discussed. They are said by several of the judges to rest on the principle established in *Keeble* v. *Hickeringill* (1). Some of the judges, indeed, criticise adversely the grounds upon which these cases were decided, and intimate that they can only be supported on the ground taken by Lord Holt in *Keeble* v. *Hickeringill*. (1) That case, however, was not even cited by the counsel who argued *Lumley* v. *Gye* (2) or *Bowen* v. *Hall* (3), or by any of the judges who decided them. If it establishes the proposition contended for, it is astonishing that those very learned and distinguished judges were unaware of any such legal proposition, and instead of taking this short cut to their decision based it upon elaborate reasoning entirely unconnected with it.

"Great reliance was placed by the respondents on certain dicta of Holt C.J. in *Keeble* v. *Hickeringill* (1). That learned judge is reported to have said that if a violent or malicious act is done to a man's occupation, profession, or way of getting a livelihood, an action lies in all cases. And he gives the following illustrations : 'If H. should lie in the way with guns and fright boys from going to school, and their parents would not let them go thither, that schoolmaster would have an action for loss of his scholars. A man hath a market to which he hath toll of horses sold, a man is bringing his horse to market to sell, a stranger hinders and obstructs him from going to the market, an action lies, because it imports damage. Again, an action on the case lies against one that by threats frightens away his tenants at will.' In all these cases I think the Chief Justice was referring to acts in themselves wrongful. Firing guns in such a manner as to terrify persons lawfully passing along the highway would, I take it, be an offence. And the other illustrations given import, I think, that the obstruction and frightening were of such a character as to be unlawful, quite independently of the motives which led to them.

"The case of *Carrington* v. *Taylor* (2) was also relied on by the respondents. It is, I believe, the only case which has been expressly based on *Keeble* v. *Hickeringill* (1). The plaintiff there possessed an ancient decoy, and the defendant sought his livelihood by shooting wild fowl from a boat on the water, for which boat, with small arms, he had a licence from the Admiralty for fishing and coasting along the shores of Essex. The decoy was a near salt creek where the tide ebbs and flows. The only proof of disturbance of the decoy by the defendant was that, being in his boat shooting wild fowl in a part of the open creek, he had fired his fowling-piece, first within a quarter of a mile of the decoy and afterwards within 200 yards of it, and had killed several widgeons. The judge left these facts to the jury as evidence of a wilful disturbance of the plaintiff's decoy by the defendant. The jury returned a verdict for 40s. damages, and the Court, on the motion for a new trial, refused to disturb the verdict. They gave no reasons for their judgment. Unless a decoy possesses

some peculiar privileges in the eye of the law, I confess myself quite unable to understand why the defendant was liable to an action or was not within his rights in shooting the wild fowl at the place he did for the purpose of gaining a livelihood, which is stated to have been his object. In any case, the decision affords no support to the contention now under consideration. For there was no allegation that the plaintiff traded in wild fowl; 'great profits and advantages,' in pleader's language, might well have accrued to him without his doing so. And there was no proof that he did so. Although some of the learned judges, who support the judgment below relied on this case, one at least thinks it bad law. The case is important as showing, as I think it clearly does, that the judges of the Court of King's Bench in 1809 did not regard the judgment in *Keeble* v. *Hickeringill* (1) as founded on interference with trade or dependent on the presence of malice.

At page 153 Lord Macnaghten says :—

"As regards authority, there is, I think, very little to be said. It is hardly necessary to go further back than *Lumley* v. *Gye* (1) in 1853. There is not much help to be found in the earlier cases that were cited at the bar, not even, I think, in the great case about frightening ducks in a decoy, whatever the true explanation of that decision may be. In *Lumley* v. *Gye* (1) it was held that an action would lie for procuring a person to break a contract for personal service. The subsequent cases of *Bowen* v. *Hall* (2) and *Temperton* v. *Russell* (3) are authorities for the proposition that the principle is not confined to contracts for personal service. There is no doubt much to be said for that proposition. But the judgment under appeal does not depend on *Lumley* v. *Gye* (1) or on any decision before or after that case. It rests only on certain dicta to be found first in *Bowen* v. *Hall* (2), and afterwards repeated in *Temperton* v. *Russell*. (3) Those dicta are of great weight, owing to the eminence of the judge by whom they were pronounced, but they certainly were not necessary for the decision in either case. *Lumley* v. *Gye* (1) was heard on demurrer. The counts which were demurred to alleged that the defendant knew 'the premises,' that is, the existence of the contract stated in the declaration and was 'maliciously intending to injure the plaintiff.' Mr. Willes, for the defendant, in reply, pointing out that malice was never averred in actions for seducing servants, argued that 'the averment of malice can make no difference'; and that seems to have been the opinion of the majority of the Court, who thought the action would lie. Crompton J. treats the allegation of malice as meaning nothing more than the allegation of notice, and Erle J. indicates that the principle on which the action is to be rested is that 'the procurement of the violation of the right—that is, "the plaintiff's right under the contract" is a cause of action.' If so, it would seem to follow that, provided the violation is committed knowingly, it cannot matter whether the thing is done maliciously or not. And, therefore, with all deference to the opinion of Blackburn J., who, if I rightly understand his words in *Cattle* v. *Stockton Waterworks* (1), seems to say that 'malicious intention' was the gist of the action, I should be disposed to hold that if a right has been knowingly violated an allegation of malice is superfluous, and that if there has been no violation of any right, malice by itself is not a cause of action. I cannot, therefore, agree with the late Master of the Rolls in thinking that the act complained of was 'wrongful' because it was 'malicious,' and that if there be a malicious act, and loss resulting from that act, it does not matter whether there has been a violation of right or not."

At page 173 Lord Davey says :—

"It was, however, argued that the act of the appellant in the present case was a violation of the right which every man has to pursue a lawful trade and calling, and that the violation of this right is actionable. I remark in passing that, if this be so, the right of action must be independent of the question of malice, except in the legal sense. The right which a man has to pursue his trade or calling is qualified by the equal right of others to do the same and compete with him, though to his damage. And it is obvious that a general abstract right of this character stands on a different footing from such a private particular right as the right to performance of a contract into which one has entered. A man has no right to be employed by any particular employer, and has no right to any particular employment if it depends on the will of another.

"But is there any such general cause of action respective of the means employed or mode of interference? I think it unnecessary to comment on all the cases which have been cited by counsel, and are referred to by the learned judges. I have read them carefully, and I am satisfied that in no one of them was anything decided which is an authority for the abstract proposition maintained. In every one of them you find there was either violence or the threat of violence, obstruction of the highway, or the access to the plaintiff's premises, nuisance, or other unlawful acts done to the damage of the plaintiff. Nor does it appear to me that the gist of the action in those cases was that the plaintiff was a trader or exercised a profitable calling. That circumstance, no doubt, afforded evidence of the damage. But I suppose that if a person obstructed the access to my house or to my vessel by molesting and firing guns at persons resorting thither on their lawful occasions, I may have my action against him, though I do not keep a school, or I am not a trader, but sailing in my yacht for my own pleasure. Or, if a person obstructs my free use of the highway, and I suffer damage thereby, I have a right of action, though my carriage does not ply for hire, but is used only for my own purposes. It is strange that if there be any such right of action for interference with trade, there is not to be found some clear authority in the law books in its favour. And, as remarked by one of the learned judges, if those who argued and those who decided *Lumley* v. *Gye* (1) had been aware of any such general doctrine, it would have disposed of that case without the elaborate consideration to be found in the judgments. I do not think that the well-known action for slander of a trader's goods supports the larger proposition attempted to be founded on it. Blackstone treats that action as a particular example of slanderous words. And it appears to me an obvious fallacy to argue backwards from the existence of some recognised and well-known cause of action to a larger and wider legal proposition of which the cause of action in question might be treated as a particular case if the larger proposition had been generally recognised.

"The authority most relied on in support of the proposition maintained by the respondents is the well known case of *Keeble* v. *Hickeringill* (2), or, more properly, the dicta of Lord Holt as reported in the note to 11 East. That case was an action by the owner of a decoy pond against the defendant for driving away his wild fowl by firing guns with intent to damnify the plaintiff. It appears to have been twice argued, and there are four separate reports of it, which do not altogether agree as to the grounds of the judgment. But I think it was decided on the ground that the act of the defendant was a wilful disturbance of the enjoyment by the plaintiff of his own land for a lawful and profitable purpose, and what is called in law a nuisance. The

reported cases in which the case has been followed, *Carrington* v. *Taylor* (3) and *Ibbotson* v. *Peat* (4), support this view. If this be a correct view of the decision, it is no authority for the larger proposition founded on it by the respondents; and the dicta of Lord Holt, however much entitled to respect, are inadequate to support the weight which it is sought to place upon them."

At page 179 Lord James of Hereford says :—

"If the principles laid down in the judgment of Lord Esher in the case of *Bowen* v. *Hall* (1) and in the case of *Temperton* v. *Russell* (2) were applied to the ordinary affairs of life, great inconvenience as well as injustice would ensue. Every competitor for a contract who alleged that he was the best person to fulfil it would be liable to an action. Take the case of an architect who seeks to be employed to the exclusion of his rivals. He says: 'My plans are the best, and following them will produce the best house at the least cost. Therefore employ me and not A. or B.' If he be so employed the architect would, according to the dicta in *Bowen* v. *Hall* (1), be liable to an action at the suit of his rivals. For he has induced a person not to enter into a contract with a third person, and his object clearly was to benefit himself at the expense of such third person. Indeed, if the opinion delivered by the late Cave J., that it is actionable for a cook to say to her master, 'Discharge the butler or I will leave you,' is correct, in that case the ingredient of 'being desirous to benefit herself at the expense of a third person' is wanting. For the objection of the cook might well proceed from a motive which would not represent any gain to herself.

"But I am aware that it was urged at the Bar, that even if the views which I have expressed to your Lordships be correct, there is an exception from general principles in favour of those whose trade or employment has been interfered with. I do not assent to this view. Before discussing the question it is necessary that some definition of the words 'interfered with' in their legal sense should be given. Every man's business is liable to be 'interfered with' by the action of another, and yet no action lies for such interference. Competition represents 'interference,' and yet it is in the interest of the community that it should exist. A new invention utterly ousting an old trade would certainly 'interfere with' it. If, too, this loose language is to be held to represent a legal definition of liability, very grave consequences would follow. Of course the conduct of the boiler-makers in the case before your Lordships amounted to an interference with the plaintiff's business, and yet, as has been pointed out, it is not said that an action lies against them. Every organiser of a strike, in order to obtain higher wages, 'interferes with' the employer carrying on his business; also every member of an employers' federation who persuades his co-employer to lock out his workmen must 'interfere with' those workmen. Yet I do not think it will be argued that an action can be maintained in either case on account of such interference. But whatever meaning may be attached to the words 'interfere with,' I see no ground for saying that any different rule should be applied to cases of interference with a man when carrying on his trade or business, or when he is engaged in any other pursuit. In the *Mogul Steamship Co. Case* (1) there was an extreme case of interference with the plaintiff's business by methods which directly injured the plaintiffs in their trade for the express purpose of benefiting the defendants. The admitted interference was carried on by several defendants in a combination which in one sense amounted to a conspiracy, yet it was held by this House that no action could be maintained for the acts done were not unlawful and the combination was not a criminal conspiracy.

"My Lords, I abstain from passing in review the older cases which refer to interference with trade or business, for they have already been very fully reviewed and dealt with. I content myself with saying that I do not think they establish more than that the interference which is in itself unlawful constitutes a cause of action. It seems somewhat contrary to common sense that an interference which is rightful when applied to general subjects becomes wrongful when a trade or business is subjected to it."

The plaintiff's counsel, as I have already said, also relied strongly upon a passage in Lord Justice Bowen's judgment in the Mogul case in which after explaining that there can be no actionable tort without the violation of a legal right, his Lordship proceeded as follows :—

"No man whether trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it."

This proposition is also said to be but a corollary from the more general proposition that intentionally to do any harm to another person without just cause is an actionable tort. It cannot, however, be too carefully borne in mind, when considering the above passage, that the judgment from which it was taken was *subsequent to the decision of the Court of Appeal in* Bowen *v.* Hall, *and prior to the decision of the House of Lords in* Allen *v.* Flood. Lord Justice Bowen followed, as he was bound to do, the decision in *Bowen* v. *Hall*, but the law laid down in this case was, as I have submitted, over-ruled by a majority of the Lords in *Allen* v. *Flood*.

Finally, if the question be considered on general principles and apart from the decision in *Allen* v. *Flood*, I submit that there is no general rule of law that a person who by some act intentionally does harm to another is *prima facie* liable to him. To make him liable it is necessary to show that the defendant has violated some right of the plaintiff, and a person has no more right to be unmolested in his trade, business or employment than he has when he is doing anything else, which he is at liberty to do. A workman, for reasons either good or bad, molests an employer by threatening to take part in a strike if he should continue to employ certain other workmen; could it be for a moment maintained that the employer or any such other workmen have any right of action? Again, a person for some reason or other induces a number of tradesmen to abstain from dealing

with another tradesman or merchant; can it be contended that the merchant or tradesman thus molested is entitled to recover compensation? Indeed, that the general principle contended for by the plaintiff's counsel in *Allen* v. *Flood* does not form part of the common law almost necessarily follows from the judgment in *Lumley* v. *Gye*, for if it did, it would (as was observed by Lord Davey and Lord Watson) have certainly been known to the very eminent judges by whom that case was decided. Yet no mention of it is to be found in any of their elaborate judgments, although it would evidently have afforded an easy solution of the important question which that case involved.

No doubt a legal system may exist, or might be constructed, in which the law of tort was founded on the principle, that intentionally to cause damage to another person, is in the absence of reasonable cause, an actionable tort, it being left to the judge to decide whether there is or is not a reasonable cause. It is, however, impossible, since the decision in *Allen* v. *Flood*, to maintain that such a principle is recognised in our existing legal system; for it would be evidently inconsistent with the legal proposition which, to use Lord Lindley's words, was so fully and authoritatively established by that case; and which his Lordship stated in the following words:—

"An act otherwise lawful although harmful does not become actionable by being done from a bad motive and with intent to annoy or harm another."

Nor is it less evident that to introduce such a fundamental principle would be in the highest degree unwise and inexpedient, inasmuch as it would make the whole law of torts vague and uncertain, until a great quantity of new judge-made law had determined in what cases there is and in what cases there is not reasonable cause or justification.

The House of Lords recently decided that it has no power to over-rule one of its own decisions, but as there are numerous dicta throwing doubt on what was, unless I am mistaken, decided in *Allen* v. *Flood*, I think it should be expressly enacted, as is proposed in Sir C. Dilke's Bill that

"A person shall not be liable for doing any act not in itself an actionable tort, only on the ground that it is an interference with another person's trade, business or employment."

APPENDIX

TO THE

MAJORITY REPORT.

TABLE OF CONTENTS.

1. ACTS OF PARLIAMENT.

CHAP. 32.

An Act to amend the Criminal Law relating to Violence, Threats, and Molestation. [29th June 1871.] A.D. 1871.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Penalty for threats, molestations and obstruction.

1. Every person who shall do any one or more of the following acts, that is to say,

(1.) Use violence to any person or any property,

(2.) Threaten or intimidate any person in such manner as would justify a justice of the peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace,

(3.) Molest or obstruct any person in manner defined by this section,

with a view to coerce such person,—

(1.) Being a master to dismiss or to cease to employ any workman, or being a workman to quit any employment or to return work before it is finished;

(2.) Being a master not to offer or being a workman not to accept any employment or work;

(3.) Being a master or workman to belong or not to belong to any temporary or permanent association or combination;

(4.) Being a master or workman to pay any fine or penalty imposed by any temporary or permanent association or combination;

(5.) Being a master to alter the mode of carrying on his business, or the number or description of any persons employed by him,

shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months.

A person shall, for the purposes of this Act, be deemed to molest or obstruct another person in any of the following cases; that is to say,

(1.) If he persistently follow such person about from place to place:

(2.) If he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof:

(3.) If he watch or beset the house or other place where such person resides or works, or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follow such person in a disorderly manner in or through any street or road.

Nothing in this section shall prevent any person from being liable under any other Act, or otherwise, to any other or higher punishment than is provided for any offence by this section, so that no person be punished twice for the same offence.

Provided that no person shall be liable to any punishment for doing or conspiring to do any act on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts herein-before specified in this section, and is done with the object of coercing as herein-before mentioned.

Legal Proceedings.

Summary proceedings for offences, penalties, &c.

2. All offences under this Act shall be prosecuted under the provisions of The Summary Jurisdiction Acts. Provided as follows:—

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners; (that is to say,)

(*a.*) In England,

(i.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute:

(ii.) In the city of London, of the Lord Mayor or any alderman of the said city:

(iii.) In any other place, of two or more justices of the peace sitting in petty sessions.

(*b.*) In Scotland, of the sheriff of the county or his substitute.

(*c.*) In Ireland,

(i.) In the police district of Dublin metropolis, of a divisional justice:

(ii.) In any other place, of a resident magistrate.

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

Appeal to quarter sessions in Great Britain

3. In England and Ireland. if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

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(3.) The appellant shall immediately after such notice enter into a recognizance in the sum of ten pounds before a justice of the peace, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and, if the matter be remitted to the court of summary jurisdiction, the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Appeal in Scotland as prescribed by 20 Geo. 2. c. 43.

4. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All offences under this Act shall be prosecuted by the procurator fiscal of the county.

Interested person not to act. 6 Geo. 4. c. 129. s. 13.

5. A person, who is master, father, son, or brother of a master in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

Definition of "Summary Jurisdiction Acts."

6. In this Act—

The term Summary Jurisdiction Acts shall mean as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions "within England and Wales with respect to Summary Convictions and Orders," and any Acts amending the same;

As to Scotland, "The Summary Procedure Act, 1864;"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) "Act, 1851," and any Act amending the same.

Repeal of Acts in Schedule as herein stated.

7. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned:

Provided, that the repeal enacted in this Act shall not affect—

(1.) Anything duly done or suffered under any enactment hereby repealed;

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed;

(3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any enactment hereby repealed;

(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
6 Geo. 4. c. 129. - -	An Act to repeal the Laws relating to the Combination of Workmen, and to make other provisions in lieu thereof.	The whole Act.
22 Vict. c. 34. - - -	An Act to amend and explain an Act of the sixth year of the reign of King George the Fourth to repeal the Laws relating to the Combination of Workmen, and to make other provisions in lieu thereof.	The whole Act.
24 & 25 Vict. c. 100. - -	An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person.	Section forty-one.

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CHAP. 31.

An Act to amend the Law relating to Trades Unions. [29th June 1871.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Trade Union Act, 1871."

Criminal Provisions.

Trade union not criminal.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Trade union not unlawful for civil purposes.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Trade union contracts, when not enforceable.

4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed:
2. Any agreement for the payment by any person of any subscription or penalty to a trade union:
3. Any agreement for the application of the funds of a trade union,—
   (*a.*) To provide benefits to members; or,
   (*b.*) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or,
   (*c.*) To discharge any fine imposed upon any person by sentence of a court of justice; or,
4. Any agreement made between one trade union and another; or,
5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

Provisions of 18 & 19 Vict. c. 63., 30 & 31 Vict. c. 117., 25 & 26 Vict. c. 89., &c. not to apply to trade unions.

5. The following Acts, that is to say,

(1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same;
(2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same; and
(3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Registered Trade Unions.

Registry of trade unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

Buildings for trade unions may be purchased or leased.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

Property of the trade unions vested in trustees.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

Actions, &c. by or against trustees, &c.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

Limitation of responsibility of trustees.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Treasurers, &c. to account.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as herein-after mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a

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just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union: and in such action the said trustees shall be entitled to recover their full cost of suit, to be taxed as between attorney and client.

Punishment for withholding money, &c.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Registry of Trade Union.

Regulations for registry.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

(1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act:

(2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:

(3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public:

(4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the recipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars as if it were the annual general statement required as herein-after mentioned to be transmitted annually to the registrar:

(5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with:

(6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

Rules of registered trade unions.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:

(1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act:

(2.) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling

Registered office of trade unions.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him: until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

Annual returns to be prepared as registrar may direct.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Registrars.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrars shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

Circulating false copies of rules, &c. a misdemeanor.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

Legal Proceedings.

Summary proceedings for offences, penalties, &c.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by The Summary Jurisdiction Acts.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by The Summary Jurisdiction Acts

Provided as folows:

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners; that is to say.

(A.) In England.

(1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute:

(2.) In the city of London, of the Lord Mayor or any alderman of the said city:

(3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland.

(1.) In the police district of Dublin metropolis, of a divisional justice:

(2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court, under the provisions of The Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

Appeal to quarter sessions.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof.:

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognisance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Appeal in Scotland as prescribed by 20 Geo. 2. c. 43.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.]

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurers's Remembrancer on behalf of the crown.

Interested person not to act as a member of a court of appeal.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

A.D. 1871.

Definitions. As to the term "Summary Jurisdiction Acts."

23. In this Act.

The term Summary Jurisdiction Acts means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within "England and Wales with respect to summary convictions and orders," and any Acts amending the same:

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanor" means a crime and offence.

As to "trade union."

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall not affect—

1. Any agreement between partners as to their own business;
2. Any agreement between an employer and those employed by him as to such employment;
3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

Repeal.

Repeal of Trades Unions Funds Protection Act, 1869, as herein stated.

24. The Trades Unions Funds Protection Act, 1869, is hereby repealed.

Provided that this repeal shall not affect—

(1.) Anything duly done or suffered under the said Act:
(2.) Any right or privilege acquired or any liability incurred under the said Act:
(3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act:
(4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULES.

FIRST SCHEDULE.

Of matters to be provided for by the Rules of Trade Unions Registered under this Act.

See 18 & 19 Vict. c. 63. s. 25.

1. The name of the trade union and place of meeting for the business of the trade union.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade unions	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

CHAPTER 86.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. [13th August 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Conspiracy, and Protection of Property Act, 1875. Short title.

2. This Act shall come into operation on the first day of September one thousand eight hundred and seventy-five. Commencement of Act.

Conspiracy, and Protection of Property.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime. Amendment of law as to conspiracy in trade disputes.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour. Breach of contract by persons employed in supply of gas or water

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour. Breach of contract involving injury to persons or property.

Miscellaneous.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour. Penalty for neglect by master to provide food, clothing, &c. for servant or apprentice.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,— Penalty for intimidation or annoyance by violence or otherwise.

1. Uses violence to or intimidates such other person or his wife or children, or injures his property; or,
2. Persistently follows such other person about from place to place; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business or happens to be, or the approach to such house or place; or,
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

A.D. 1875.

Reduction of penalties.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one fourth of the penalty imposed by such Act.

Legal Proceedings.

Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

Proceedings before court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

Regulations as to evidence.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

Appeal to quarter sessions.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace, with or without sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Definitions.

General definitions; "The Summary Jurisdiction Acts."

13. In this Act,—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders" inclusive of any Acts amending the same; and

"Court of summary jurisdiction."

The expression "court of summary jurisdiction" means—

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2.) As respects any police court division in the Metropolitan police district, any Metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognisance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Definitions of "municipal authority" and "public company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the City of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"Maliciously" in this Act construed as in Malicious Injuries to Property Act.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act, of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven to be construed in reference to any offence committed under such last-mentioned Act.

Saving Clause.

Saving as to sea service.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

Repeal.

Repeal of Acts.

17. On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to amend the Criminal Law relating to violence, threats, and molestation;" and

II. "The Master and Servant Act, 1867," and the enactments specified in the First Schedule to that Act, with the exceptions following as to the enactments in such Schedule; (that is to say,)

(1.) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled "An Act to authorise justices of the peace to impose fines "upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of ap- "prentices for ill-usage of such their apprentice; and also to make provision for the execution of warrants "of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers; "and

(2.) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as "such, in certain cases, out of the limits of the counties in which they actually are; to make provision for "the execution of warrants of distress granted by them; and to authorise them to impose fines upon con- "stables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates "to constables and other peace or parish officers; and

(3.) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better regulation of certain apprentices;" and

(4.) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure; (that is to say,)

(*a.*) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices;" and

(*b.*) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, "and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished; and

(*c.*) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words "An Act for repealing several Laws relating to the manufacture of woollen cloth "in the county of York," and ends with the words "for preserving the credit of the said manufacture at the "foreign market;" and

(*d.*) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An "Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manu- "factory;" and

(*e.*) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled "An Act for the more effectual prevention of frauds and abuses "committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and "woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence "to the end of the next session of Parliament;" and

(*f.*) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chaper forty, the title of which begins with the words "An Act to amend the Laws," and ends with the words "workmen engaged therein;" and

(*g.*) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further regulations respecting the tickets of "work to be delivered to silk weavers in certain cases."

Provided that,—

(1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and

(2.) The repeal enacted by this section shall not affect—

(*a.*) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

(*b.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*c.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Application of Act to Scotland.

Application to Scotland. Definitions.

18. This Act shall extend to Scotland, with the modifications following; that is to say,

(1.) The expression "municipal authority" means the town council of any royal or parliamenty burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867:

(2.) The expression "The Summary Jurisdiction Act" means the Summary Procedure Act, 1864, and any Acts amending the same:

(3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

Recovery of penalties, &c. in Scotland.

19. In Scotland the following provisions shall have effect in regard in the prosecution of offences, recovery of penalties and making of orders under this Act:

(1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court:

A.D. 1875.

(2.) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheri court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Ac 1864:

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed, therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864:

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

Appeal in Scotland as prescribed by 20 G. 2. c. 43.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

Application to Ireland.

21. This Act shall extend to Ireland, with the modifications following; that is to say.

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justies of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, entitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleasing, lighting, or paving any town or township.

[39 & 40 VICT.] *Trade Union Act* (1871) *Amendment.* [CH. 22.]

CHAP. 22.

An Act to amend the Trade Union Act, 1871. [30th June, 1876.] A. D. 1876.

Whereas it is expedient to amend the Trade Union Act, 1871:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title.

1. This Act and the Trade Union Act, 1871, herein-after termed the principal Act, shall be construed as one Act, and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."

Trade unions to be within s. 28 of Friendly Societies Act, 1875.

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

Amendment of s. 8 of principal Act.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of "a trade union shall be vested in the trustees of such branch:" The said section shall be read and construed as if immediately after the herein-before recited words there were inserted the words "or of the trustees of the trade union, "if the rules of the trade union so provide."

Provision in case of absence, &c. of trustee.

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Jurisdiction in offences.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

Registry of unions doing business in more than one country.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

Life Assurance Companies Acts not to apply to registered unions.

7. Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

Withdrawal or cancelling of certificate.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases:

(1.) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct:

(2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months previous notice in writing, specifying briefly the ground of any proposal withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

Membership of minors.

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

Nomination.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all aquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his

A.D. 1876.

decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

Change of name.

11. A trade union may, with the approval in writing of the chief registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

Amalgamation.

12. Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

Registration of changes of names and amalgamations.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

Dissolution.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the central office herein-before mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

Penalty for failure to give notice.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the chief or any assistant registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Definition of "trade union" altered.

16. So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows:

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

2. CASES REFERRED TO IN THE MAJORITY REPORT.

The QUEEN *against* ROWLANDS, PEEL, GREEN, WINTERS, PITT, PRATT, DUFFIELD, WOODNORTH and GAUNT.

1851, 17 Q.B. A. & E. 671.

Indictment, removed into this Court by certiorari. It contained the following counts.

1. That, before and at the time of the committing &c., *Richard Perry* and *George Henry Perry* carried on trade and business as manufacturers of japanned and tin wares at *Wolverhampton* in the county of *Stafford* under the name, firm &c. of *Richard Perry and Son:* and that divers, viz. fifty, persons were workmen and were hired and employed by and worked as workmen for the said *R. P.* and *G. H. P.* in their said trade and business: And that *Harry Rowlands*, late of &c. (names and descriptions of the defendants), with divers other evil disposed persons, on &c., with force and arms, at &c., did amongst themselves unlawfully conspire, combine, confederate and agree together, by unlawfully molesting the said workmen so hired and employed by and working for the said *R. P.* and the said *G. H. P.* in their said trade and business as aforesaid, to force and endeavour to force the said workmen so hired and employed by and working for the said *R. P.* and *G. H. P.* as aforesaid in their said trade &c. as aforesaid to depart from their said hiring, employment and work: To the great damage of the said *R. P.* and *G. H. P.*, to the evil example &c., and against the peace &c.

2. Like the first count, only stating the means to be, by unlawfully using threats to the said workmen so hired and employed &c.

3. Like the preceding, but stating the means to be, by unlawfully intimidating the said workmen so hired &c.

4, 5, 6. Counts similarly framed, for conspiring to force individual workmen, named, to depart from their hiring, by the means stated in counts 1, 2, 3, respectively.

7. Inducement as in count 1, stating that divers, to wit fifty, persons were workmen and were hired and employed by and worked for *R. P.* and *G. H. P.* in their said trade as aforesaid: And that defendants, with divers &c., did unlawfully conspire &c., by unlawfully molesting the said *R. P.* and *G. H. P.*, to force and endeavour to force the said workmen so hired &c. and working &c. to depart from their said hiring, employment and work: To the great damage &c.

Indictment charged defendant swith conspiring to force workmen hired and employed by *P.* in his business of a japanner to depart from their said employment,

By unlawfully "molesting" the said workmen.

By unlawfully "using threats" to the said workmen.

By unlawfully "intimidating" the said workmen.

By unlawfully "molesting" *P.*

By unlawfully "obstructing" *P.*, so carrying on his said business, and the workmen so hired &c.

Held that these counts were sufficiently full and certain, and that the means by which the conspiracy was to be carried on were well stated in the words of stat. 6 *G.* 4. *c.* 129. *s.* 3.

Other counts charged a conspiracy to force *P.* to make an alteration in the mode of conducting his business,

By "molesting" *P.*

By "obstructing" *P.* by inducing and persuading workmen hired and employed by him in his business to leave their said hiring and employment.

Held good counts.

Other counts stated that persons were being hired and employed as workmen for *P.* in his trade, and that defendants conspired.

By molesting and obstructing such workmen as aforesaid as might be willing to be hired &c. by *P.* in his said trade &c., and who were not then hired and employed by *P.* or by any other person, and

By using threats and intimidation to such workmen as aforesaid who might be willing &c.,

To prevent and endeavour to prevent the said workmen, so willing &c., from hiring themselves to and accepting work from *P.* as aforesaid in his said trade &c.

Held good counts.

Another count (framed with reference to stat. 4 *G.* 4. *c.* 34. *s.* 3.) charged that divers, to wit &c. persons, being artificers, had contracted with *P.* to serve him as workmen and artificers in his said trade and business for certain times agreed upon, and had entered into such service: and that defendants conspired by divers subtle means and devices to induce and persuade such artificers, so having contracted &c., and so having entered &c., unlawfully to absent themselves from the said service without the consent of *P.* before the terms of the respective contracts were completed.

Another count stated that *H.* (an individual workman) had in like manner contracted with *P.*, and entered &c., and that defendants conspired, by divers subtle means and devices and illegal acts and practices, and by intoxicating the said *H.*, to induce and persuade *H.* &c. (as in the preceding count).

Held good counts.

Other counts charged: That defendants, intending to oppress *P.* in his said trade, conspired by divers subtle means and devices, and by intoxicating and thereby rendering senseless the workmen of *P.* in his said trade, to convey to a distance and carry away the said workmen, and thereby prevent them from continuing to work for *P.* in his said trade.

And that defendants conspired, by divers subtle &c. and by illegal acts and practices, and by molesting and rendering intoxicated the workmen employed by *P.*, and inducing them to depart from the said employment and break their contracts with *P.*, to force and compel *P.* to alter and thereby increase the amount of wages which he paid to his workmen.

Held good counts.

Other counts alleged:

That defendants conspired unlawfully to intimidate, prejudice, and oppress *P.* in his trade and occupation as a japanner, and to prevent his workmen from continuing to work for him in his said trade.

That defendants conspired by divers subtle means and devices and wicked acts and practices to injure and oppress *P.* in his trade, business &c. of &c., and to induce his workmen to depart from their hiring and employment with P. before the period of their agreement with him was completed. And

That defendants conspired unlawfully to intimidate, prejudice and oppress *P.* in his trade and occupation of &c., and to entice and seduce away the workmen of *P.* from the employment of *P.*, and thereby to injure and oppress him in his said trade.

Semble, that these were bad counts, as being too vague.

8. Like count 7, but stating the means to be, by unlawfully obstructing the said *R. P.* and *G. H. P.*, so carrying on their trade and business as aforesaid, and the said workmen so hired &c. by and working for the said *R. P.* and *G. H. P.* as aforesaid in their said trade and business as aforesaid.

9. That *R. P.* and *G. H. P.* carried on trade &c. at &c.: And that defendants, with divers other &c., at &c., on &c., did unlawfully conspire &c. by molesting the said *R. P.* and *G. H. P.* to force and endeavour to force the said *R. P.* and *G. H. P.*, so carrying on their trade &c. as aforesaid, to make an alteration in the mode of conducting and carrying on their said trade &c. as aforesaid: To the great damage &c.

10. Inducement that fifty workmen were hired &c. by *R. P.* and *G. H. P.*, as in former counts: Allegation that defendants, with divers &c., conspired &c., " by obstructing the said *R. P.* and *G. H. P.* by inducing and persuading the said workmen in the hiring and employment of the said *R. P.* and *G. H. P.*, so carrying on business as aforesaid, to leave their hiring, employment and work, to force and endeavour to force the said *R. P.* and *G. H. P.*, so carrying on trade and business as aforesaid, to make an alteration in the mode of conducting and carrying on their said trade " &c. as aforesaid: to the great damage &c.

11. That *R. P.* and *G. H. P.* carried on trade &c.: and that divers persons were being hired and employed as workmen for the said *R. P.* and *G. H. P.* in their said trade and business: And that defendants, with divers &c., on &c., unlawfully conspired &c. by molesting and obstructing such workmen as aforesaid as might be willing to be hired and employed by the said *R. P.* and *G. H. P.* in their said trade and business as aforesaid, and who were not then hired and employed by the said *R. P.* and *G. H. P.* or by any other person, to prevent and endeavour to prevent the said workmen, so willing to be employed and hired by the said *R. P.* and *G. H. P.* in their said trade &c. as aforesaid, from hiring themselves to and from accepting work and employment from the said *R. P.* and *G. H. P.* as aforesaid in their said trade &c. as aforesaid: to the great damage &c.

12. Like count 11, but stating the means to be, by unlawfully using threats and intimidation to such workmen as aforesaid who might be willing. &c.

13. That *R. P.* and *G. H. P.* carried on trade &c.: And that divers, to wit fifty, persons, being artificers, had contracted with the said *R. P.* and *G. H. P.* to serve them as workmen and artificers in their said trade and business for certain times and periods respectively agreed upon between them and the said *R. P.* and *G. H. P.*; and the said persons so being such artificers as aforesaid had entered into the service of the said *R. P.* and *G. H. P.* as such manufacturers as aforesaid: And that defendants, with divers &c., unlawfully conspired &c. by divers subtle means and devices to induce and persuade such artificers, so having contracted with the said *R. P.* and *G. H. P.* as aforesaid to serve them in their said trade and business for certain times &c. as aforesaid and so having entered into the service &c. as aforesaid, unlawfully to absent themselves from the said service of the said *R. P.* and *G. H. P.* without the consent of the said *R. P.* and *G. H. P.* or either of them, before the respective terms of the said contracts as aforesaid were completed: To the great damage &c.

14. Inducement, that *William Hodson*, being an artificer, had contracted &c.: Averments, similar to those in count 13, of contract for service as a workman and artificer for a period &c. (specified) on terms agreed upon between them, and entry into the service: Allegation that defendants, with divers &c., conspired &c., by divers subtle means and devices and illegal acts and practices, and by intoxicating the said *W. Hodson*, to induce and persuade the said *W. Hodson*, such artificer as aforesaid and so having contracted &c. as aforesaid, to serve &c. for the said period on the said terms so as aforesaid agreed upon between them the said *W. Hodson* and the said *R. P.* and *G. H. P.* as aforesaid and so having entered into the service &c. as aforesaid, unlawfully to absent himself from the service of the said *R. P.* and *G. H. P.* without the consent of the said *R. P.* and *G. H. P.* or either of them, before the term of the said contract as aforesaid was completed: To the great damage &c.

15. A similar count to the 14th; laying a conspiracy by the like means to induce &c. *Thomas Griffiths* unlawfully to absent himself &c.

16. That defendants, with divers &c., conspired unlawfully to intimidate, prejudice and oppress one *Richard Perry* and one *George Henry Perry* in their trade and occupation as manufacturers of japanned and tin wares, and to prevent the workmen of the said *R. P.* and *G. H. P.* from continuing to work for the said *R. P.* and *G. H. P.* in their said trade and occupation.

17. That defendants, with divers &c., conspired by divers subtle means and devices and wicked acts and practices to injure and oppress the said *R. P.* and *G. H. P.* in their trade, business and occupation of manufacturers of tin and japanned ware and to induce the workmen of the said *R. P.* and *G. H. P.* to depart from their hiring, employment and work with the said *R. P.* and *G. H. P.* before the period of their agreement with the said *R. P.* and *G. H. P.* was completed.

18. That defendants, with divers &c., wickedly intending to injure and oppress the said *R. P.* and *G. H. P.* in their trade and business as manufacturers of japanned and tin wares, unlawfully conspired &c., by divers subtle means and devices and by intoxicating and thereby rendering senseless the workmen of the said *R. P.* and *G. H. P.* in their trade and business, to convey to a distance and carry away the said workmen of the said *R. P.* and *G. H. P.*, and thereby to prevent the said workmen from continuing to work for the said *R. P.* and *G. H. P.* in their said trade and business as aforesaid.

19. That defendants, with divers &c., conspired &c. unlawfully to intimidate, prejudice and oppress one *Richard Perry* and one *George Henry Perry* in their trade and occupation of manufacturers of japanned and tin wares, and to entice and seduce away the workmen of the said *R. P.* and *G. H. P.* from the employment of the said *R. P.* and *G. H. P.* and thereby to injure and oppress the said *R. P.* and *G. H. P.* in their said trade and occupation.

20. That defendants, with divers &c., unlawfully conspired &c. by divers subtle means and devices and by illega acts and practices, and by molesting and rendering intoxicated the workmen in the employment of the said *R. P.* and *G. H. P.*, and by inducing the workmen to depart from the said employment of the said *R. P.* and *G. H. P.* and to break their contracts with the said *R. P.* and *G. H. P.*, to force and compel the said *R. P.* and *G. H. P.* to alter and thereby increase the amount of wages which the said *R. P.* and *G. H. P.* then were in the habit of paying to the workmen in the employment of them the said *R. P.* and *G. H. P.*

On the trial, before *Erle* J., at the *Staffordshire* summer assizes in this year, the defendants (except *Pitt*, who was acquitted) were found Guilty upon all the counts. In this term (*a*)

Sir *A. J. E. Cockburn*, Attorney General, *Whateley*, *Keating*, *Peacock* and *Parry* (appearing respectively for different defendants), moved in arrest of judgment. The counts down to the 10th inclusive charge conspiracies to force workmen to leave their employment, or the masters to alter their mode of carrying on business, by molesting, by threats, by intimidating, and by obstructing. These counts are bad, as being too vague. In the words of *Tindal* C. J. in *O'Connell*

(*a*) *November* 21st. Before Lord Campbell C. J., *Patteson*, *Coleridge* and *Erle* Js.

v. *The Queen* (*a*), "they do not state the illegal purpose and design of the agreement entered into by the defendants, with such proper and sufficient certainty, as to lead to the necessary conclusion that it was an agreement to do an act in violation of the law." To "molest," as explained in *Johnson's Dictionary*, is only "to disturb; to trouble; to vex:" which might be done by means not unlawful, and yet produce the effects said to have been contemplated by the defendants. If the means of molestation were unlawful, the indictment should have shown it; *Rex* v. *Seward* (*b*), *Rex* v. *Jones* (*c*). A count for conspiracy was pronounced bad on a similar ground in *Regina* v. *Peck* (*d*). The word "unlawfully" does not supply the want of the essential averments; *Rex* v. *Seward* (*e*). Again "threats" are not necessarily illegal threats. The defendants might merely have threatened to cease associating with the parties whom they addressed. As to "intimidating," it was the opinion of all the Judges, adopted by the House of Lords in *O'Connell* v. *The Queen* (*g*), that an alleged agreement to procure meetings for the unlawful purpose "of obtaining, by means of the intimidation to be thereby caused," certain objects, did not, without further averment, shew an illegal purpose. *Tindal* C. J. said: "The word 'intimidation' is not a technical word; it is not vocabulum artis, having a necessary meaning in a bad sense; it is a word in common use, employed on this occasion in its popular sense; and in order to give it any force, it ought at least to appear from the context what species of fear was intended, or upon whom such fear was intended to operate." A man may be intimidated by telling him that if he acts in a certain manner he will ruin his family; but this is not an unlawful menace. The same course of observation applies to "obstructing." In *Frost* v. *Lloyd* (*h*) it was held that to allege an obstructing of a leet jury was not enough, without stating some specific act. The allegation of inducing and persuading, in the 10th count, does not add anything material. Conspiring to persuade is no offence, unless illegal means are used. [Lord *Campbell* C. J. The persuading is the means, not the object.]

These objections apply also to counts 11 and 12, which allege conspiracies, by molesting and obstructing, and by threats and intimidation, to prevent workmen from hiring themselves to the prosecutors: and, further, it ought to have been stated that the defendant knew of an intended hiring by these parties: and, again, in these counts, the names of the workmen should have been stated, or an excuse shewn for omitting them; *King* v. *The Queen* (*i*), and an *Anonymous* (*j*), case there cited by *Parke* B., as having been decided at the *Norwich* Spring assizes, 1845. *Tindal* C. J., delivering the judgment of the Exchequer Chamber in *King* v. *The Queen* (*i*), said: "The charge is, that the defendants below conspired to cheat and defraud *divers* liege subjects, being tradesmen, of their goods &c.; and the objection is that these persons should have been designated by their Christian and surnames, or an excuse given, such as that their names are to the jurors unknown; because this allegation imports that the intention of the conspirators was to cheat certain definite individuals, who must always be described by name or a reason given why they are not; and, if the conspiracy was to cheat indefinite individuals, as for instance those whom they should afterwards deal with or afterwards fix upon, it ought to have been described in appropriate terms, shewing that the objects of the conspiracy were, at the time of making it, unascertained." [Lord *Campbell* C. J. Here the workmen are not the parties to be injured: your cases are no authority for your position.]

It may be argued in defence of all these counts that they are grounded upon a statute (*k*) and follow its words. But that applies only where the proceeding is directly upon the statute, and alleges acts contra formam statuti. Here the charge itself is at common law. And, where the proceeding is, in form, upon a statute, it is sometimes necessary "to adopt a narrower description than what is conveyed in the literal terms of the act;" *Paley on Convictions*, p. 100, 3d ed. The rules on that subject are there stated, pp. 100 et seq., and are explained by cases, among which are *Rex* v. *Ridgway* (*l*) and *Rex* v. *James* (*m*): and it is laid down, as a rule in describing the offence, "that it is not sufficient to state, as the offence, that which is only the legal result of certain facts; but the facts themselves must be specified, that the Court may judge when they amount in law to the offence." [Lord *Campbell* C. J. That is where the corpus delicti charge the act in violation of the statute: here the corpus delicti is the conspiracy to do what is forbidden by the statute.] The statute forbids doing the things only when they cannot be done so as to be lawful; and that ought to be shewn by averment. *Seth Turner's Case* (*n*) is an instance. There the information, under stat. 4 *G.* 4. *c.* 34. *s.* 3. (*o*), charged that *S. Turner* did, before the term of his contract was completed, "absent himself from his said service, and did thereby then and there neglect to fulfil the same, contrary to the form of the statute" &c.; and, the party having been convicted of the offence as alleged, this Court held that no offence was properly charged, because the absence was not stated to have been wilful or without lawful excuse. *Chaney* v. *Payne* (*p*) was decided on the same principle. The offence described by stat. 6 *G.* 4. *c.* 129. *s.* 3. depends entirely upon the means used; and, if those are not properly described, there is no sufficient charge of conspiracy to violate the statute.

The 13th, 14th and 15th counts state that workmen had contracted to serve the prosecutors for certain times &c., and had entered their service, and that the defendants conspired by divers subtle means and devices to induce and persuade them unlawfully to absent themselves from the service of the prosecutors without their consent before the terms of their contracts were completed. The workmen could not have been convicted of an offence, under stat. 4 *G.* 4. *c.* 34. *s.* 3., in absenting themselves, unless the contract was averred to have been in writing; *Lindsay* v. *Leigh* (*q*). And, to charge the present defendants effectually, the counts ought to have stated in terms what the contract was; and that, under such contract, the workmen had entered the service; and that the contract was made after the passing of the Act. It should also have been stated that the absence was for some given time, and without lawful excuse. [Lord *Campbell* C. J. If the conspiring was well laid, it would be of no consequence to shew what the absence in fact was.] Again (as was contended with reference to the 10th count), conspiring merely to "induce and persuade" is no ofience, even if a contract appeared which made it unlawful not to serve. [Lord *Campbell* C. J. It is said that they conspired

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a 11 *Cl. & Fin.* 155. 234. *b* 1 *A. & E.* 706. *c* 4 *B. & Ad.* 345.
d 9 *A. & E.* 686. *e* 1 *A. & E.* 706. 712. *g* 11 *Cl. & Fin.* 155.
h 9 *Q. B.* 130. *i* 7 *Q. B.* 795. *j* 7 *Q. B.* 798.

k Stat. 6 *G.* 4. *c.* 129. *s.* 3. enacts: That, "if any person shall by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman or other person hired or employed in any manufacture, trade or business, to depart from his hiring, employment or work, or to return his work before the same shall be finished, or prevent or endeavour to prevent any journeyman, manufacturer, workman or other person not being hired or employed from hiring himself to, or from accepting work or employment from any person or persons;" "or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting or carrying on such manufacture, trade or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants; every person so offending or aiding, abetting or assisting therein, being convicted" &c (summarily before justices), shall be imprisoned &c.

l 5 *B. & Ald.* 527. *m Cald.* 458. *n* 9 *Q. B.* 80.

o Stat. 4. *G.* 4. *c.* 34. *s.* 3. enacts: That if any servant in husbandry or any artificer, &c., labourer or other person, "shall contract with any person or persons whomsoever, to serve him, her or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service shall absent himself or herself from his or her service before the term of his or her contract, whether such contract shall be in writing or not in writing, shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanour in the execution thereof, or otherwise respecting the same," a justice may issue his warrant to apprehend such servant &c., and may examine into the complaint; and, if it shall appear to the justice that the servant &c. "shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanour as aforesaid," such justice may commit the servant &c. to the House of Correction, &c.

p 1 *Q. B.* 712. *q* 11 *Q. B.* 455.

to induce "by divers subtle means and devices:" are not these terms of art?] Such terms were used in one count of the indictment in *Rex* v. *Biers* (*a*); yet the judgment was arrested. [Lord *Campbell* C. J. The objection there was rather to the generality of the object, as alleged, than of the means. Perhaps the count might not have been maintainable however specifically the means had been set out.] *Rex* v. *Richardson* (*b*) seems to shew that it would. In *Rex* v. *Seward* (*c*) *Taunton* J. said that "merely persuading" paupers to contract matrimony was "not an offence. It, indeed, it were done by unfair and undue means, it might be unlawful; but that is not stated." In *Regina* v. *Daniell* (*d*) *Holt* C. J. thought that merely enticing an apprentice to leave his master was not an indictable offence. *Regina* v. *Collingwood* (*e*) is to the same point. The Combination Act, 39 & 40 *G.* 3. *c.* 106. *s.* 3., made it an offence to persuade, solicit or influence the workman. Stat. 6 *G.* 4. *c.* 129. *s.* 2. repeals that clause; sect. 3 re-enacts some of the former prohibitions, and introduces others, but does not revive this. If the persuasion by one person would not be an indictable offence, such an act cannot be made so by joining several in the indictment as conspirators; *Rex* v. *Pywell* (*f*), *Rex* v. *Turner* (*g*). [*Erle* J. There is a later case in which these were much considered (*h*).] There the indictment expressly alleged fraud and false pretences. The charge of intoxicating, in counts 14, 15 and 18, is not so framed that the Court can give any sensible construction to it: a man does not "intoxicate" another. [*Coleridge* J. It has been held of late here that the Courts have more common sense than some of the old decisions give them credit for. We have considered that such expressions as "Frozen Snake" and "Man Friday" may be understood by us as a person out of Court understands them (*i*). A person out of Court would understand what was meant by a man intoxicating another. Lord *Campbell* C. J. And intoxicating is not laid as the corpus delicti.]

Counts 16 to 18, inclusive, are too vague, and are open to the objections already made as to "intimidating," "intoxicating" and "inducing." To "entice and seduce away" workmen, as charged in count 19, is no offence, according to *Regina* v. *Daniell* (*j*). [Lord *Campbell* C. J. The count charges a conspiring to do it.] The 20th count is merely cumulative, summing up the various means previously alleged, and which, taken singly, are not matters of criminal charge. [Lord *Campbell* C. J. The charge is that the defendants conspired, by those means, to force and compel the prosecutors to increase the amount of wages which they were in the habit of paying to their workmen.]

Counsel then moved for a new trial on the grounds of misdirection (see p. 686, note (*b*). post): and that there was no evidence for the jury against some of the defendants.

Cur. adv. vult.

Lord CAMPBELL C. J. now said: The Judges who are present (*k*), and my brother *Coleridge* with whom we have consulted, are all agreed on the subject of this motion. As to the motion for a new trial, we think there is no ground for it except in the cases of *Rowlands* and *Winters*, against whom there was some evidence, but my brother *Erle* would have been more satisfied if the verdict had been in their favour. If a rule nisi is granted as to them, it must be for a new trial as to all who have been convicted (*l*): but it will perhaps be thought, on the part of the Crown, that the ends of justice are satisfied if a nolle prosequi be entered as to these defendants, and the verdict stand as to the rest. With respect to the indictment, we all agree in thinking that the 16th, 17th and 19th counts are open to objection as being too vague. We give no final opinion: but on these counts there will be a rule nisi to arrest the judgment, unless a nolle prosequi be entered.

Allen Serjt., for the Crown, consented to enter a nolle prosequi as to all the defendants on the 16th, 17th and 19th counts, and on the indictment generally as to *Rowlands* and *Winters*.

Lord CAMPBELL C. J. That being so, no rule will be granted. We think that there was no misdirection, and that there was ample evidence, except against *Rowlands* and *Winters*. Then, as to the record: a nolle prosequi is entered on the 16th, 17th and 19th counts; and the others are wholly unexceptionable. It is objected that some counts do not disclose the nature of the molestation or intimidation by which the conspiracy was to take effect: but this is quite unnecessary. The words of the Legislature are used; the terms in question have a meaning stamped upon them by the Act, 6 *G.* 4. *c.* 129. *s.* 3.; and we must take it that they are used here in that sense. And they are not employed as describing the substantive offence for which the indictment is preferred: that offence consists in the conspiracy, which is a misdemeanour at common law. I have looked most elaborately into all the authorities which were cited: and as to *Turner's Case* (*m*) I have no doubt whatever that it was wrongly decided. Going into the prosecutor's close against his will, armed with offensive weapons for the purpose of opposing any persons who should endeavour to apprehend, obstruct or prevent them, would in itself be an indictable offence; and the conspiring to commit such an offence must be an indictable conspiracy.

Per Curiam. Rule refused (*n*).

Sentence of three months' imprisonment was then passed. *Parry* asked of the Court that the defendants might be placed in the rank of first class misdemeanants.

Lord CAMPBELL, C. J. asked if the Court had any authority to make this order; and, none being pointed out, he said We sentence to imprisonment merely (*o*).

(*a*) 1 *A. & E.* 327. (*b*) 1 *M. & Rob.* 402. See *Sydserff v. The Queen*, 11 *Q. B.* 245.
(*c*) 1 *A. & E.* 715.
(*d*) 6 *Mod.* 99. *S. C.* 1 *Salk.* 380. See *Rex.* v. *Higgins*, 2 *East*, 4. *Regina* v. *F. O'Connor*, 5 *Q. B* 16. 26.
(*e*) 2 *Ld. Raym.* 1116.
(*f*) 1 *Stark N. P. C.* 402. (*g*) 13 *East*, 228. (*h*) See *Regina* v. *Kenrick*, 5 *Q. B.* 49.
(*i*) See *Hoare & Silverlock*, 12 *Q. B.* 624. (*j*) 6 *Mod.* 99.
(*k*) Lord *Campbell* C. J., *Patteson* and *Erle* Js. (*l*) See *Regina* v. *Gompertz*, 9 *Q B* 324, 842.
(*m*) *Rex* v. *Turner*, 13 *East*, 228.
(*n*) One ground of the motion for new trial was that *Erle* J., in summing up, had directed the jury as follows.
The law is clear, that workmen have a right to combine for their own protection, and to obtain such wages as they choose to agree to demand. I say nothing at present as to the legality of other persons, not workmen, combining with them to assist in that purpose. As far as I know, there is no objection, in point of law, to it; and it is not necessary to go into that matter; but I consider the law to be clear so far, only, as while the purpose of the combination is to obtain a benefit for the parties who combine; a benefit which by law they can claim. I make that remark because a combination for the purpose of injuring another is a combination of a different nature, directed personally against the party to be injured; and the law allowing them to combine for the purpose of obtaining a lawful benefit to themselves gives no sanction to combinations which have for their immediate purpose the hurt of another.
The rights of workmen are conceded: but the exercise of free will and freedom of action, within the limits of the law, is also secured equally to the masters. The intention of the law is at present to allow either of them to follow the dictates of their own will, with respect to their own actions, and their own property; and either, I believe, has a right to study to promote his own advantage, or to combine with others to promote their mutual advantage.
His Lordship then said that, in this case, upon undisputed evidence, there had been a combination to force Messrs. *Perry* to agree to an uniform book of prices: That, upon the facts before the jury, they would have to give their opinion upon three classes of counts, charging conspiracies: 1. to prevent workmen from working for the prosecutors, by intimidating the workmen; 2. to force the assent of the prosecutors to certain alterations, by intimidating the prosecutors; 3. to induce workmen to leave the prosecutors' employment, contrary to their contract: and he stated that if the jury thought these counts sustained by the evidence, they should convict upon them. He then added:
(*o*) See stat. 5 & 6 *Vict. c.* 22. *s.* 17.; *Cobbett* v. *Grey*, 4 *Exch.* 729; *Gregory* v. *The Queen*, 15 *Q. B.* 957.

CENTRAL CRIMINAL COURT.

December 16, 1872.

(Before Mr. Justice BRETT.)

REG *v.* BUNN, RAY, JONES, WILSON and DILLEY. (*a*)

1872, 12 Cox 316.

Conspiracy—Trades Union Act (34 & 35 *Vict. c.* 31); *Criminal Law Amendment Act* (34 & 35 *Vict. c.* 32).

An indictment for conspiracy at common law will lie against two or more persons for conspiring to commit an offence for which special provision is made by statute.

The defendants, servants of a gas company under contract of service, being offended by the dismissal of a fellow servant, agreed together to quit the service of their employers, without notice and in breach of their contracts of service, by reason of which the company were seriously impeded in the conduct of their business.

eing indicted for a conspiracy, it was contended that the stat. 34 & 35 *Vict. c.* 31, *having determined that no act shall be illegal merely by reason of its being in restraint of trade, and* 34 & 35 *Vict. c.* 32 *having also defined the offence "obstructing or molesting," and otherwise determined what shall be deemed to be offences as between masters and servants, had virtually declared all other acts not to be punishable.*

But, held, that the provisions of the statute had not affected the common law of conspiracy, for which an indictment would lie.

The questions submitted to the jury were as follows:—

First. Did the defendants agree together to force the company against its will to employ a man it objected to employ?

Second. If so, was this sought to be done by improper threats or molestation?

Third. Molestation being anything done with improper intent, to the unjustifiable annoyance and interference with the master in the conduct of his business, and such as would be likely to have a deterring effect on a man of ordinary nerve,—was a quitting of the employ without notice, and breaking of the contract of service, to the undoubtedly serious injury of the master, a molestation within the above meaning of the term?

Fourth. Did the defendants agree together to force their employer to do what they desired by such a molestation?

Fifth. Did the defendants endeavour to enforce their object by simultaneously breaking their contracts of service?

A conspiracy may be to do an unlawful act, or to do a lawful act by unlawful means. If the jury deemed the object lawful, they would further say if the means employed were lawful or unlawful.

JOHN BUNN, George Ray, Edward Jones, Robert Wilson, and Thomas Dilley were indicted for a common law conspiracy against their masters, the Gas Light and Coke Company. The charge was variously stated in ten courts. The 1st, 2nd, 3rd, 4th, 5th, and 10th counts were as follows:—

Central Criminal Court } The jurors for our lady the Queen, upon their oath present, that heretofore and at the time
to wit. } of committing the offence hereinafter charged, a certain public company called the Gas-Light and Coke Company, carried on, used, and exercised the trade and business of manufacturers and vendors of gase hiring and employing divers servants, workmen, and labourers, in their said trade and business, at wages mutually agreed upon between them the Gas Light and Coke Company and the said workmen and labourers, and that the said, Gas Light and Coke Company had so hired and employed one Thomas Dilley, as such servant, and had lawfully, and for good and sufficient cause and reason, discharged the said Thomas Dilley from the service of the said company. And the jurors aforesaid, upon their oath aforesaid, do further present that John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, and the said Thomas Dilley, and divers other persons whose names to the jurors aforesaid are unknown, well knowing the premises, and being evil disposed persons, and unlawfully, wickedly, and unjustly devising, contriving, and intending to injure, prejudice, and annoy the said company, and to force and endeavour to force the said company to make alterations in their mode of conducting and carrying on their said trade and business on the 2nd day of December, in the year of our Lord, 1872, at the parish of Woolwich, in the county of Kent, and within the jurisdiction of the said Central Criminal Court, unlawfully did conspire, combine, confederate, and agree together amongst themselves, by divers unlawful ways, contrivances, and stratagems, and by divers threats and menaces, and other unlawful and wicked means and devices to obtain, extort, and procure of and from one George Careless Trewby, then being the superintendent of the Beckton works of the said Gas Light and Coke Company, and then being lawfully authorised to appoint and discharge the servants and workmen of the said company, the promise of him the said George Careless Trewby, contrary to his own free will to take back and reinstate in the service of the said company the said Thomas Dilley, to the great damage and injury of the said company, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, and Thomas Dilley, and divers other persons, whose names are unknown to the jurors aforesaid, well knowing the premises in the first count mentioned, and being evil disposed persons, and unlawfully, wickedly, and unjustly devising, contriving, and intending to injure, prejudice, and annoy the said Gas

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But, supposing any of the defendants are acquitted as to all those classes, and you should still be of opinion that a combination existed for the purpose of obstructing Messrs. *Perry* in carrying on their business, and forcing them to consent to this book of prices, and, in pursuance of that concert, they persuaded the free men and gave money to the free men to leave the employ of Messrs. *Perry*, the purpose being to obstruct them in their manufacture and to injure them in their business, and so to force their consent, with no other result to the parties combining than gratifying ill will, I am of opinion that that would also be a violation of the law, and warrant a conviction upon the counts directed against that form of offence.

It was contended, on behalf of the defendants, that this language of the learned Judge led the jury to suppose that, although the combination were for a legitimate object, yet, if means to be used would have the effect of obstructing the prosecutors in carrying on their business, it was an indictable conspiracy; whereas, if the object of the workmen was to enforce their own lights, they were justified in combining to do so, though the effect were an obstruction of the prosecutors' business. But the learned Judge stated that his words had no such meaning; and the Court saw no objection to the summing up.

(*a*). Reported by EDWARD T. E. BESLEY, Barrister-at-Law.

Light and Coke Company, and to force and endeavour to force the said company to make alterations in their mode of conducting and carrying on their said trade and business, afterwards, to wit, on the day and in the year aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, unlawfully did conspire, combine, confederate, and agree together amongst themselves, by divers unlawful ways, contrivances and stratagems, and by divers threats and menaces, and other unlawful and wicked means and devices, to obtain, procure, and compel the said company, contrary to their own free will and judgment, to reinstate the said Thomas Dilley, in the service of the said company, to the great injury, prejudice, and damage of the said Gas Light and Coke Company, to the evil example of all others in like case offending, and against the peace of our said lady the Queen, her crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that before and at the time of committing the offence hereinafter in this count mentioned, the said Gas Light and Coke Company carried on, used, and exercised the trade and business of manufacturers and vendors of gas, and had hired and employed divers, to wit, five hundred servants, workmen, and labourers, to assist them in the said manufacture, at wages mutually agreed upon between the said Gas Light and Coke Company and the said servants, workmen, and labourers, under and by virtue of certain lawful contracts made between the said Gas Light and Coke Company and the said servants, workmen, and labourers, in that behalf, and had hired and employed the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, William Lenz, Edward Penn, Hermann Gers, John Sieper, and divers other servants, workmen, and labourers under the said contracts, and the said servants, workmen, and labourers had severally in and by the said contracts agreed not to leave the service of the said company without due notice of their intention so to do; and the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, and whilst the said contracts were subsisting and in full legal force and effect, to wit, on the day and in the year aforesaid, at the parish aforesaid, in the county aforesaid, and within the jurisdiction of the said Central Criminal Court, the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, Thomas Dilley, and divers other persons, whose names to the jurors aforesaid are unknown, well knowing the premises, and being evil disposed persons, and unlawfully, wickedly, and unjustly devising, contriving and intending to injure, prejudice, and annoy the said company, and to hinder and prevent the said company from carrying on, using and exercising their said trade and business, unlawfully did conspire, combine, confederate, and agree together amongst themselves, by divers unlawful ways, contrivances, and stratagems, unlawfully to break the said contracts respectively; and that they, the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, William Lenz, Edward Penn, Hermann Gers, John Sieper, and the said other servants, workmen, and labourers should depart from their said hiring and service, and that the said last-mentioned persons respectively should not give respectively to the said company any notice in pursuance of the said contracts respectively of their intention so to depart from their said living and employment, to the great damage and injury of the said company, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and at the time of committing the offence hereinafter charged divers public companies carried on, used and exercised the trade and business of manufacturers and vendors of gas, hiring and employing divers workmen and labourers in their said trade and business, at wages mutually agreed upon between them, the said companies, and the said workmen and labourers. And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, before and at the time of committing the offence next hereinafter charged, divers public companies, to wit, the Gas Light and Coke Company, the Imperial Gas Company, the Independent Gas Company, the Commercial Gas Company, the Surrey Consumers' Gas Company, the Phœnix Gas Company, and divers other public companies carried on, used and exercised the said trade and business of manufacturers and vendors of gas as aforesaid, in divers parishes and places within the jurisdiction of the said Central Criminal Court; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, Thomas Dilley, and divers other persons whose names are unknown to the jurors aforesaid, well knowing the premises, and being evil disposed persons and unlawfully, wickedly, and unjustly devising, contriving, and intending to impoverish the said several companies in this count mentioned and divers other public companies, manufacturers and vendors of gas, and each of them respectively on the day and in the year aforesaid, within the jurisdiction of the said Central Criminal Court, unlawfully did conspire, combine, confederate and agree together amongst themselves by divers unlawful ways, contrivances and stratagems, and by divers unlawful and wicked means and devices, to impoverish in their said trade and business of manufacturers and vendors of gas the said Gas Light and Coke Company, the said Imperial Gas Company, the said Independent Gas Company, the said Commercial Gas Company, the said Surrey Consumers' Gas Company, and the said Phœnix Gas Company, and divers other companies respectively then and there carrying on, using and exercising the said trade and business of manufacturers and vendors of gas as aforesaid, to the great damage of the said Gas Light and Coke Company, the said Imperial Gas Company, the said Independent Gas Company, the said Commercial Gas Company, the said Surrey Consumers' Gas Company, and the said Phœnix Gas Company, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

Fifth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said John Bunn, George Ray, Edward Jones, Robert Wilson, Samuel Webb, James Clark, Thomas Dilley, and divers other persons whose names are unknown to the jurors aforesaid, well knowing the premises in the fourth count mentioned, and being evil disposed persons, and unlawfully, wickedly, and unjustly devising, contriving, and intending to hinder and prevent the said public companies in the fourt count mentioned, and each of them respectively, from carrying on, using, and exercising their said trade and business of manufacturers and vendors of gas on the day and in the year aforesaid, within the jurisdiction of the said Central Criminal Court, unlawfully did conspire, combine, confederate, and agree together amongst themselves by divers unlawful ways, contrivances, and stratagems, and by divers unlawful and wicked means and devices, to prevent and hinder them, the said GasLight and Coke Company, the said Imperial Gas Company, the said Independent Gas Company, the said Commercial Gas Company, the said Surrey Consumers' Gas Company, the said Phœnix Gas Company, and each of them respectively, from carrying on, using, and exercising their said trade and business so carried on, used, and exercised as aforesaid, to the great damage of the said Gas Light and Coke Company the said Imperial Gas Company, the said Independent Gas Company, the said Commercial Gas Company, the said Surrey Consumers' Gas Company, and the said Phœnix Gas Company, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

Tenth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that before and at the time of the committing the offence hereinafter in this count mentioned, the said Gas Light and Coke Company were possessed of certain buildings, gas holders, retorts, machinery, appliances, and materials, for manufacturing gas at Beckton, in the county of Kent, and within the jurisdiction of the said Central Criminal Court, and were under certain Acts of Parliament legally bound to supply gas for the lighting of the public lamps in certain districts and places in the said Acts of Parliament mentioned, and were also in like manner bound to supply all the liege subjects of our said lady the Queen with gas, within the said districts at all hours of the day and night. And the jurors aforesaid, upon their oaths aforesaid, do further present, that for the purpose of keeping up a constant and continuous supply of gas in the said public lamps, and to the said liege subjects of our said lady the Queen, it was necessary to employ a large

number of servants, workmen, and labourers, to wit, five hundred servants, workmen, and labourers, to carry on continuously and without interruption the manufacture of the said gas, at the said works at Beckton, and that the work and labour of manufacturing gas was so continuously and without interruption carried on by means of about half of the number of the said servants, workmen, and labourers working in the said works by night, and about half of the number of the said servants, workmen, and labourers working in the said works by day. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said servants, workmen, and labourers were hired by the said company, and the said servants, workmen, and labourers entered the service of the said company upon an agreement and contract of service, that the said service should not be determined by the said company or by the said servants, workmen, and labourers, respectively, without a previous notice of their intention respectively, so to determine the said service; the object of the said agreement and contract of service being that there should be no interruption in the carrying on the said manufacture of gas at the said works, by reason of any of the said servants, workmen, and labourers suddenly ceasing to perform their part of the said work and labour. And the jurors aforesaid, upon their oath aforesaid, do further present, that previous to the 2nd day of December, A.D. 1872, the said continuous manufacture of gas had been and was being carried on at the said works as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that on the said 2nd day of December, A.D. 1872, at Beckton aforesaid, and within the jurisdiction of the said Central Criminal Court, John Bunn, George Ray, Edward Jones, Robert Wilson, James Clark, and Thomas Dilley, well knowing the premises, and being servants, workmen, and labourers as aforesaid, under contracts of service as aforesaid, and which said contracts of service with the said company as aforesaid had not been determined by previous notice as aforesaid, wilfully, designedly, and unlawfully did conspire, combine, confederate, and agree together, and with divers others whose names are to the jurors unknown, themselves to commit a breach of the said contract o service, and by divers threatening notices, exhortations, persuasions, falsehoods, stratagems and devices to procure, induce, and constrain the other servants, workmen, and labourers, whether working on the said works by night or by day, against their own free will and good judgment also to commit a breach of the said contract of service at one and the same time; that is to say, to refuse to do the necessary work and labour required to be done as aforesaid, for the purpose of manufacturing and supplying gas without interruption as aforesaid, and to leave the said works of the said company suddenly, simultaneously, and without notice, to the great injury of the said company, and of the said liege subjects of our lady the Queen, and of the said servants, workmen, and labourers of the said company, who were otherwise ready and willing to continue their said contract of service, and against the peace of our said lady the Queen, her crown and dignity.

The sixth, seventh, eighth, and ninth counts were for molesting, intimidating, and forcing William Lens and others to leave the service of the Gas Company, and were given up by the prosecution upon the suggestion of the learned judge in the course of the trial.

Hardinge Giffard, Q.C., and *Besley* (instructed by *Humphreys* and *Morgan*) for the prosecution.

Straight and *Humphreys* for Bunn and Dilley; *Montague Williams* for Ray, Jones, and Wilson (instructed by *Shaen, Roscoe*, and *Massey*).

Giffard, in opening the case, cited *R.* v. *Druitt, Lawrence, Adamson, and others* (10 Cox C. C. 600), and read the words of Bramwell, B., there reported:—"When the law gave or rather acknowledged, a right, it provided a punishment or a remedy for the violation of that right. That was a cardinal rule, and an obvious one. The old expression that 'there was no wrong without a remedy,' might also be interpreted to mean that there was also no right without a remedy. Sometimes the remedy was by a criminal proceeding, sometimes by a civil action, sometimes by both. Having made those general remarks, he would make another, which was also familiar to all Englishmen—namely, that there was no right in this country under our laws so sacred as the right of personal liberty. No right of property or capital, about which there had been so much declamation, was so sacred or so carefully guarded by the law of this land as that of personal liberty. They were quite aware of the pains taken by the common law, by the writ, as it was called, of *habeas corpus*, and supplemented by statute, to secure to every man his personal freedom—that he should not be put in prison without lawful cause, and that if he was, he should be brought before a competent magistrate within a given time and be set at liberty or undergo punishment. But that liberty was not liberty of the body only. It was also a liberty of the mind and will; and the liberty of a man's mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law's protection as was that of his body. Generally speaking, the way in which people had endeavoured to control the operation of the minds of men was by putting restraints on their bodies, and therefore we had not so many instances in which the liberty of the mind was vindicated as was that of the body. Still, if any set of men agreed among themselves to coerce that liberty of mind and thought by compulsion and restraint, they would be guilty of a criminal offence, namely, that of conspiring against the liberty of mind and freedom of will of those towards whom they so conducted themselves.' He also cited *R.* v. *Duffield* (5 Cox C. C. 406), and read the words of Erle, C. J.:—"The indictment charges in one class of the counts, and that to which I think your attention should be most prominently directed, that they conspired to obstruct Mr. Perry in the carrying out of his business, by persuading and inducing workmen, that had been hired by him, to leave his service in order to force him to change the mode of carrying on his business. There are no threats or intimidations supposed to have been used towards the workmen, but there is a class of counts founded upon that, and I take it to be perfectly clear in point of law, and I lay it down to you for the purpose of your verdict, that if that class of counts is made out you will find the defendants guilty upon that class of counts, that they conspired to obstruct Mr. Perry by persuading his workmen to leave him."

The following is an epitome of the evidence then given for the Crown.

George Careless Trewby (examined by *Besley*), said: I am the superintendent of the Gas Light and Coke Company at Beckton Station. It is our largest place for the manufacture of gas. We supply the whole of the city with gas, and part of the West-end. The storage of gas at Beckton is limited. It is therefore necessary the manufacture should go on night and day. For that purpose we employ about five hundred workmen and divide them into two gangs. They are employed in the retort houses where the fires are attended to. The night gang go to work about six o'clock in the evening and work till half-past five the following morning. They are at actual work about five hours. The day gang go on some at six, some at half-past, and others at seven, for the different processes. With some of the workpeople I had written and signed contracts. Those that had not contracts were under an engagement for a week's notice. An advertisement was posted up to that effect at the pay office. A matter was reported to me about the 22nd of November with respect to Dilley. He was then a servant. I gave directions for his discharge. I heard nothing further until the 2nd of December. Collier, a foreman on the works, came to me. It was a quarter to seven in the morning. In consequence of what he told me I went to one of the retort houses. I there saw the night and day gangs. In the ordinary course of things the night gang should have left at six o'clock. Before the men commence work they change their clothes. None of the day gang had changed their clothes. When I got there I asked the men what they wanted to see me about, I noticed Jones and Wilson, two of the defendants, standing close to me. I also noticed Webb. The men said they wanted to see me about Dilley's case. Webb was the first spokesman; and I called for the day gang because it was their duty to have gone to work. Jones said they were all there. I said, "Why don't you go to your work?" He said, "We have decided not to go until Dilley is reinstated." Wilson spoke to the same effect. Webb spoke also in the same strain. As he belonged to the night gang he should have left the works. I then said, "It is

past the time the whole of you should have gone to your work; the company have always behaved liberally towards you; they have conceded all you have asked from time to time. I call on all those who are well-disposed to them to go to their work." Not a man separated from the rest. I said both to Jones and Wilson, "Am I to understand that you refuse to go on with your work until Dilley is reinstated?" They said, "Yes." They said, "Dilley's and the Fulham question had been put into one." I said, "I had nothing to do with affairs at Fulham;" and I then left them.

By BRETT, J.—I spoke loud enough for all the men to hear. They did not move.

Examination continued.—I said I should leave them for a short time for consideration. I remained away ten minutes. I then went back. There was something said about the men acting under their delegates. I asked for Bunn and Ray. I said to them, "Am I to understand that you refuse to go on with your work until Dilley is reinstated?" They said, "Yes." I said, "You are acting illegally; some are under a monthly and some under a weekly agreement, and you can't leave without giving proper notice." I said, "I will give you ten minutes more to consider." Jones said, "We have made up our minds." I then went away, and returned in about ten minutes. They then said they were of the same opinion.

By BRETT, J.—Jones, Bunn, and Ray were there, I won't be sure as to Wilson; Webb was there also. Jones said the men were of the same opinion. I said, "Very well, then; I will reinstate Dilley, but I do so under protest; now go on with your work." Webb said, "They don't understand what you mean by protest." I said, "Do you?" He said, "Yes." I said, "Perhaps you will explain it to them." He said, "The guvernor means to punish you." He said, "Will you withdraw that word." I said, "How can I? You insist on Dilley's being reinstated, and I reinstate him, but under protest." Webb said, "We may as well tell you we can't go on with our work until the men at Fulham are let in." I said, "That is a matter with which I have nothing to do." The men said, "They could not go to work until they had received orders from their delegate meeting;" that was said by Webb. The night and day hands walked off in a body. I saw Dilley there at the time. These four men belonged to the day gang. Dilley had been discharged. I noticed a placard on the lobby door. Some of the men would have to go there to change their clothes. We have four lobbies. This was where the meeting took place with the men.

Besley.—We propose to read the placard.

M. Williams objected. There is nothing to show that these men ever saw it or that they could read or write.

Examination continued.—I signed on behalf of the Company, these four agreements (produced). I find the signatures of three of the defendants there, Bunn, Ray, and Jones.

Williams.—It does not bring it any closer.

BRETT, J.—It gets rid of the one point—if a man can write, he can also read.

Williams.—I submit there is still the other point.

BRETT, J.—Have you any objection?

Straight.—The only objection is, that knowledge must be brought home to the defendants if they are to be criminally responsible.

Gifford.—I submit it is evidence; it was a direction to the men to do something.

BRETT, J.—That is assuming what is in it. How do you charge these men? Is it a charge of conspiracy between these men and others to the jurors unknown?

Gifford. Yes. It does not require that the particular thing should have been done by any one of these men.

BRETT, J.—What do you say, Mr. Straight, to the rule that in indictments for conspiracy, if evidence is given of a conspiracy affecting the defendants, then everything done by any party to that conspiracy is evidence against them.

Straight.—But there must be evidence to show that the act was done by some party to the conspiracy.

BRETT, J.—Is there not that evidence? Is there no evidence to show this was put up by some of the gang of workmen?

Straight.—I should venture to say there is no evidence.

BRETT, J.—Who else could have put it up?

Straight.—That I am not called on to answer.

BRETT, J.—If you can't suggest anyone else, it is obvious it must be some of them.

Straight.—It may be a stranger put them up.

BRETT, J.—That is an answer to the evidence, but is it not more probable that the workpeople were all acting together? I admit the evidence on the grounds I have stated, namely, that there is evidence of a conspiracy.

The notice was put in and read, and was as follows:—

"Notice.—All men that belong to the Society of Beckton Station, working to-night, are bound to answer to their names at six o'clock, a.m., this morning, December 2nd, 1872; by order of the General Council. Those absenting themselves after this notice must abide by the consequences."

Examination continued.—That was no notice of mine. My attention was drawn to it that morning.

Cross-examination.—This is a monthly agreement (agreement handed in and read as follows):—

BECKTON STATION.

AN AGREEMENT made this 14th day of November, 1871, between (*stoker*), of the one part, and the Gas Light and Coke Company, by G. C. Trewby, their agent, of the other part as follows.

The said company agree to take the said into their employment, at his request, upon the following terms and conditions:

1. The said shall continue in the service of the company for one calendar month, to be reckoned from the day of the date hereof, and after the expiration thereof for such further period until the service shall be put an end to by either of the parties hereto giving to the other one calendar month's previous notice in writing of such their intention.

2. The said shall observe and conform to all the rules and regulations of the company, which from time to time are posted on the premises of the company for the information of the persons in their employ.

3. The said shall faithfully work for and serve the company to the best of his skill and power wherever his services be required, and in whichever of the following classes or capacities the company may from time to time require, and at the rate of pay or wages specified for each class and description of work at the foot hereof or such other piece work as shall be from time to time mutually agreed on.

4. If the said shall leave his employment, or absent himself from his work, without giving the aforesaid previous notice, all pay which may then be due to him shall be absolutely forfeited to the company.

5. The company shall be at liberty to discharge him at any time without previous notice; but in that case (unless in the cases after mentioned) he shall be entitled to one months' pay, at the same rate as shall have been paid to him immediately previous to such discharge; but if his discharge shall be on account of drunkenness, neglect of work, or other misconduct, he shall not be entitled to receive more than the amount of wages which may be due to him up to the time of his dismissal.

6. It is lastly mutually declared, that nothing herein contained shall be construed to exempt the said from being liable to the laws now or hereafter in force for the regulations of masters and servants.

As witness the hands of the said parties

Witness, W. COLLIER. G. C. TREWBY.

1st Class Stokers.	2nd Class Stokers.	3rd Class Stokers.	Coke Spreaders.	Labourers.
Per week of 7 days, 36s. 6d.	Per week of 7 days, 36s.	Per week of 7 days, 34s.	Per week of 7 days, 29s.	Per day, 3s. 6d.

PIECE WORK.

Filling Common Coal into Buckets from Ship, per ton, 2¾d.	Filling Cannel Coal into Buckets from Ship, per ton, 4d.		Loading Coke into Waggons or Carts, per chaldron, 6d.	Unloading Lime from Barge into Trucks, per yard, 5d.

The men had to discharge the duties included in that agreement. These agreements have been in use since 1871. In 1871, Bunn was employed in the retort house. He would be a stoker. Labourers would be liable to stoker work if they could do it. It was the practice at the works to a certain extent. Dilley was in the service about eighteen months. All that I have told you about took place on the 2nd of December. The whole affair took about three-quarters of an hour. There were no threats used. I reinstated Dilley because I was anxious to get the work done. Dilley was what is called a pipe jumper. It is included in the third class pay. He would have been liable for other work. Pipe jumping is keeping the ascension pipe from the retorts clear. The rates of wages have been altered since the agreement. Dilley would work day or night, according to the gang in which he was. The men are paid on the increased rate.

BRETT, J.—I trust these questions are material.

Straight.—I am putting these questions because, so far as I can gather from the indictment, they allege there were contracts between the men at the bar and the gas company, which would bring them under the terms of the Master and Servant Act, and what I am going to submit to you is that these persons do not come within the terms of that Act of Parliament.

Cross-examination continued.—A person who had signed these agreements was never dismissed for the day. I am aware Dilley left his employment on the 31st of November. The men wear different clothes at their work. They left them at the works in their lockers. Each man has a locker.

Cross-examination by Mr. Williams.—Ray, I believe, was a pipe jumper; Jones was a second class; Wilson, he was either first or second class. It appears Wilson cannot write.

BRETT, J.—Wilson's agreement is signed with a mark.

Williams.—Yes, my lord.

Cross-examination continued.—These agreements were read to the men by Collier, the foreman. When I first went to the men about five hundred were assembled. I addressed them as a body. I heard no bad language or threats.

William Collier said.—I am foreman to the carbonizing department of the Beckton Gas Works. I was witness to the signature of those four men. Wilson is a marksman.

Cross-examined.—The men had the opportunity of reading the agreements over. I cannot say the agreement was read over to these individual men.

Samuel Leonard.—I was foreman of stokers. On the morning of December 2nd, when I got to the works, I found a great number of men there. They were standing by the retort house. In consequence of some observations, I went and fetched Mr. Trewby, the Manager. On the 22nd of November I ordered Dilley to do some work. He refused to do it. He said, "It is against the rules of my society."

Cross-examined.—I have known Dilley since he has been in the service. He always before discharged his duty properly. He was a hard working man. He had left on the 2nd December. He had been doing different work, not always the same. Bunn was under my control. Dilley told me he came from the Imperial Gas Company at Battle Bridge. Bunn was a good workman.

Thomas Taylor.—I was in the service of the gas company. I was a member of the Amalgamated Gas Stokers' Society. Dilley represents the place where he is employed at that Society. Jones was also a delegate. Wilson was substituted in his place in consequence of some discussion between the men. I struck with the rest of the men. Until I got there that morning I had no intention of striking.

Cross-examined.—I was cross-examined before the magistrates. The Society of which I speak has been in existence some four or five months.

Re-examined.—When we left the works we went to a public house in the Barking Road. We expected to be sent for by Mr. Trewby to go to work again.

To *Straight.*—Bunn was not a delegate. Dilley had been one, but I can't say whether he was after his discharge.

To BRETT, J.—The delegates are elected by the workmen at the works. They attend the meetings of the society.

Thomas Roffey.—I was employed at the gas works, and was a member of the Amalgamated Gas Stokers' Society. I was compelled to be a member by the workmen. On the 2nd of December, when I was at work, I saw the defendants

there. Dilley told me if I did not go with the men I should be spotted. I had no intention of leaving the works. I went with the mob to Barking. I heard something said about telegrams there. The telegram was to come from London.

Edward Penn.—I was in the employ of the gas company at Beckton. I went as usual to my work on the 2nd of December. I saw Dilley there. I told him I was going to work. He told me to put my clothes on, or else put up with the consequences.

Cross-examined.—I was examined at Woolwich before a magistrate.

Frederick Byes.—I am a gas-stoker. I went to work on the 2nd of December. I saw Bunn there. He said there was no work to-day. I went to Barking. I saw Jones and Ray there. I had no idea of any strike until I got to the works.

Cross-examined.—I am a member of the union.

William Lenz.—I am a German, and was working at Beckton Gas Works. I was on the day gang. I was told by Dilley to go to the meeting with the others. I said that is nothing to do with me. Dilley said, "Bloody German."

John Sieper.—I was in the employ of the gas company. On the morning of the 2nd of December I went to my work. I was told to go to the meeting. I was frightened to go to work.

Cross-examined.—I was a stoker. All that Dilley said to me was, "Go to the meeting."

Frederick Alexander McMeun.—I am sub-engineer to the Imperial Gas Light and Coke Company at their station at Fulham. On the 28th of November there was a man discharged, in consequence of which there was a strike.

Straight directed his Lordship's attention, first, to the form of the indictment, and, secondly, whether there was sufficient evidence to bring the defendants or any of them within the terms of any of its ten counts, in which the offences charged were more or less varied. It must be assumed that a combination between workmen for the purpose of raising their wages was, both before, and at the time of, the passing of the Master and Servants Act, in 1867, perfectly legal, that Act only extending the operation of a variety of statutes, commencing with the 20 Geo. 2, c. 119—all these earlier Acts rendered certain persons therein specified capable of entering into contracts to which certain penalties and liabilities were attached, and which obligations were not incidental to the ordinary contract of hiring between master and servant. The relations between masters and servants, prior to the Act of 1871, the Trades Union Act, and the Criminal Law Amendment Act, has never yet been defined by statute. The present indictment, which is one at common law, charges in its first two counts a combination and conspiracy on the part of the several defendants, with an intent on their part to injure, annoy, and prejudice, and to force and endeavour to force the Gas Company to make alterations in their mode of conducting and carrying on their trade and business by divers unlawful ways, contrivances, and stratagems, and by divers threats and menaces to obtain, extort, and procure from George Trewby a promise contrary to his (Trewby's) own free will, that he would restore Dilley. Since, however, the well known case of the tailors tried by Mr. Baron Bramwell (*Reg.* v. *Druitt and others*, 10 Cox C. C. 600), where existing law was correctly expounded, viz., in 1871, which may be almost said to go together, the Trades Union Act, and the Criminal Law Amendment Act, have been passed, by which the Legislature, having regard to the relations subsisting between masters and men, has created certain criminal offences. This would seem to abrogate any common law right to create offences which may, and probably must, at the time these statutes were passed, have been in the contemplation of the Legislature. The 34 & 35 Vict. c. 31, s. 2, says, "The purposes of any Trade Union shall not, by reason merely that they era in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to a criminal prosecution for conspiracy or otherwise." And sect. 3 says, "The purposes of any Trade Union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust." The Act of Parliament was passed mainly in consequence of the case of *Farrar* v. *Close*, in the Queen's Bench, where the judges differed, the Lord Chief Justice and Mr. Justice Mellor holding one view, and Mr. Justice Hannen and Mr. Justice Hayes an opposite one, and on account of complaints made that Trade Unions legitimately formed for the legitimate purpose of promoting the fair interests of their trade, were not capable of prosecuting persons who embezzled their funds. By that Act, the old doctrine that combinations between workmen in restraint of trade were illegal, was abolished, and it was enacted that Trades Unions and Societies of workmen for the purpose of doing something that might restrain trade might be formed without being illegal. The definition in the Trades Union Act, of what was to be a Trade Union is as follows: "The term Trade Union means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workman and workman, or between masters and masters; or for imposing restrictive conditions upon the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of any one or more of those purposes being in restraint of trade, provided that this Act shall not affect: 1. Any agreement between partners as to their own business; 2. Any agreement between an employer and those employed by him as to such employment; 3. Any agreement in consideration of the sale of the goodwill of a business, or of instruction in any profession, trade, or handicraft." Therefore, since the Act has been passed, it is perfectly legitimate for a body of men to form such a combination, although the object of their associating together may be to do something that will result in the restraint of trade. The 34 and 35 Vict. c. 32 (Criminal Law Amendment Act) the object of passing which was that when the Legislature was permitting a combination of the character and description such as that which is mentioned in the Trades' Union Act, it was necessary that every precaution should be thrown round the persons engaged in those combinations, in order to protect the members of those combinations on the one hand and the masters on the other, plainly and distinctly shows what the offences are of which these persons could be guilty. Under these circumstances, the Legislature in 1871 has taken a review of all the offences that would be likely to be committed in reference to these combinations, and by the Act of Parliament then passed we are bound. If a conspiracy can be a conspiracy that is indictable at all, it must be a conspiracy to do something in reference to this particular Act of Parliament, and must be guided by evidence such as would be required upon this particular Act of Parliament. In the 1st section of the Act, which is somewhat difficult of construction, it says, "Any person who shall do any one or more of the following acts, that is to say: (1) use violence to any person. (2) Threaten or intimidate any person in such a manner as would justify a justice of the peace, upon complaint made to him to bind over the person, so threatening or intimidating to keep the peace. (3) Molest or obstruct any person in the manner defined by this section." Therefore, passing over the first two heads, which have no reference to the present case (as they do not seem to operate at all), the question is—if this statute has created the offences by workmen against their masters and no offences, other than defined by the statute, can be charged against them, is there any evidence here to show a molestation, or obstruction, or a conspiracy to molest or obstruct, in the terms, and according to the meaning of this Act of Parliament? It must be borne in mind that such must always be done with a view to cause the person, who is a master, to dismiss or cease to employ any workman, or being a workman to quit any employment, "or return work before it is finished," "being a master, not to offer, or being a workman not to accept any employment or work; being a master or workman to belong or not to belong to any temporary or permanent association or combination; being a master or workman, to pay any fine or penalty imposed by any association or combination; being a master, to alter the mode of carrying on his business or the number or description of persons employed by him." The section goes on to say that a person so offending shall be liable to imprisonment with

hard labour for any term not exceeding three months. But this is, if he shall molest or obstruct any master, for example, or any man, for the purpose of coercing him to do any of the things mentioned. Then it goes on to say, "A person for the purposes of this Act shall be deemed to molest or obstruct another person in any of the following cases, that is to say, if he persistently follow such persons about from place to place; if he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof; if he watch or beset the house or place where such person resides or works, or carries on business or happens to be, or the approach to such house or place, or if with two or more other persons he follows such person in a disorderly manner in or through any street or road." The "molesting or obstructing" must partake, as far as the facts in support are concerned, of the three matters I have mentioned. Then the Act goes on to say, that nothing in this section shall prevent any person from being liable under any other Act or otherwise to any higher punishment than is provided by this section, so that no person be punished twice for the same offence, provided that no person shall be liable to any punishment for doing or conspiring to do any act, on the ground that such act restrains or tends to restrain the free course of trade, unless that act is one of the acts herein before specified in this section, and is done with the object of coercing as before mentioned. It is clear, therefore, that in 1871, the Legislature was passing a statute regulating all the relations between masters and servants; and by those provisions they practically say that there shall be no other offence as between master and servant but the offences detailed in the preceding part of this section. [BRETT, J.—Does it; where does it say that?] The words I have just read bear that construction. [BRETT, J.—What is the rule of construction as applicable to the present case? If these statutes create an offence, then in order to make out the offence you must bring it within the statute. But if there were offences at common law, are those offences done away with by these statutes? Unless you can find words that say that the only offences shall be those within these statutes, that would not be so, would it?] The words are "unless such act is one of the acts hereinbefore specified." If it was not intended to do away with all conspiracies by servants against their masters, and *vice versa*, except those mentioned in the Act, it puts both the workman and the master in a worse position than he was before this Act of Parliament passed, because the Act was specially passed to ascertain and define the criminal responsibilities as between master and servant. I contend that it destroys all preceding or hitherto existing offences; in other words, it consolidates the whole law as it shall and ought to exist. [BRETT, J.—You must put your propositions in terms, that all conspiracies between servants as against their masters with regard to those relations, or all conspiracies by masters as against their servants, which were illegal before are legal now, unless they are forbidden by that statute.] That, my lord, is exactly the position I am contending for and take up. Referring to the particular form of the indictment, I say that the counts are bad, as they ought to have the relation of an offence, and ought to have followed the terms of the Act of Parliament. [BRETT, J.—You are applying to quash the indictment. To do so you must make out two propositions; first, that the counts are bad; and secondly if they are, that this is the right time to quash them.] I may at anytime take objection to the form of the indictment. There is the further proposition, that in respect to some of the counts there is no evidence to go the jury. I refer to the first count, and to the second, which practically repeats it; (read first and second counts.) [BRETT, J.—First of all, what do you say as to whether this is a good conspiracy (if it is made out, of course), at common law before the statute?] I am inclined to think it was prior to the statute, as it would be an unlawful combination between these parties, by threats and menaces, to induce some person, who was in a position to do a certain thing, to do that certain thing. [BRETT, J.—Not merely on the ground that it was in restraint of trade, because it might be without threats and menaces—not merely on that ground, but because it is an attempt to interfere with the liberty of the man's will in the conduct of his trade, by menaces and threats. These grounds are not touched by the Trades Union Act. Let us see whether such a conspiracy, good at common law, is or is not within this statute.] I should say it is within the statute; but in order to support it, that is, as to the requisite proof, it would come under the third head of the early portion of the section, viz., "molesting or obstructing in order to induce or coerce the master to do something specified in the Act," and there ought to be proof that there was such a "molestation or obstruction" as was contemplated by the Act of Parliament. [BRETT, J.—Molestation or obstruction by "one" workman is now made an offence. It was not so before this statute.] Yes; there is a provision at the end of the section with reference to what matter an indictment for conspiracy may be preferred. [BRETT, J.—"Conspiring to do an act on the ground that such act *restrains or tends to restrain the free course of trade*." What you have to meet is this: The prosecution will say, this is not a conspiracy charged upon the ground that it was an act which tends to restrain the free course of trade, but it is a conspiracy *founded upon an interference with a person's free will, by threats and intimidations*.] All this must of necessity have been taken into consideration at the time the Act passed, and if the Legislature had intended to give any force to the latter contention, they would have done so, knowing the unwillingness there is on the part of the judges to allow indictments at common law to be preferred. As they have not done so, it must be presumed that no such offence exists. The same remarks apply to the second count of the indictment. Next, as to the third count. Where one has to consider the contracts which were entered into between the company and the various persons employed by them, it runs as follows: "And the said workmen and labourers under and by virtue of certain lawful contracts made between the said Gas Light and Coke Company and the said servants, workmen, and labourers in that behalf, and had hired and employed the said John Bunn, and others," setting out the various persons "as workmen and labourers under the said contracts, and the said servants, workmen, and labourers had severally in and by the said contracts agreed not to leave the service of the said company without due notice of their intention of doing so," then it goes on to allege that they "devising to injure, prejudice, and annoy the said company, and to hinder and prevent the said company from carrying on, using, and exercising their said trade and business, unlawfully did conspire, combine, confederate, and agree together amongst themselves by divers unlawful ways, contrivances, and stratagems, unlawfully to break the said contracts respectively, and that they and others, servants, workmen, and labourers, should depart from their said service and hiring, and should not give respectively to the said company any notice in pursuance of the said contracts respectively of their intention so to depart from their said hiring and employment." The meaning of this count is that these parties conspired among themselves, they being parties bound by a legal contract created by statute, both themselves to leave the employment without proper notice, and to induce others also in the same employment to do so as well. [BRETT, J.—Not simply to leave the employ, but, after having entered into contracts binding upon them according to law, and so binding them that if they break they are liable to criminal punishment, they conspire and agree together that these persons should break their contracts made according to the law, and, according to the criminal law, for the purpose of interfering with their masters.] Just so, that is what I was anxious to put as my proposition. The main point one has to consider at the outset of the count is, Were these persons within the Act of Parliament? [BRETT, J.—That goes to a question of whether theere is any evidence upon this count for the purpose of quashing it, or saying it is a bad count; you must assume that the contract is what it is stated to be.] I say, the whole indictment should be quashed, as substantially what is stated in the first count is repeated in the other counts; the same remarks apply to each of them. [BRETT, J.—Do you maintain your proposition that this third count is bad on the face of it?] No, only that there is no evidence to go to the jury upon it. I have no complaint, in point of law, to make upon any other counts. [BRETT, J.—Now return to your first count. Supposing that is a good count, what do you say about the evidence?] As regards that I can scarcely, I think, ask you to say that there is not some evidence to go to the jury; but as to the third count, I say that there is no evidence to go to the jury on that count, because, alleging, as it does, that a contract has been entered into between the company and these various persons—— [BRETT, J.—As I understand you, your first point is that there is no evidence of a contract, for the breach of which a workman might be summarily convicted. Why not?] Because the defendants do not come within the terms of any of the Acts of Parliament relating to masters and servants which gives that criminal remedy to the master. The words of the 30th and 31st of Victoria are as follows: "In this Act the following words

and expressions shall have the several meanings assigned to them unless there is anything in the context repugnant to such construction: the word '*Employed*,' reading it as it is here, no doubt, very broad, 'shall include any servant, artificer, labourer, apprentice, or other person, whether under the age of twenty-one or above that age, who has entered into a contract of service with any employer.'" If that stood by itself, it would be all very well, but on turning to the third section I find that we are relegated back to all the old statutes as to what "*employ*" means. The words are: "Nothing in this Act shall apply to any contract of service other than a contract within the meaning of the enactments described in the first schedule to this Act." And in that first schedule are included all the various Acts of Parliament that have regulated the relations between masters and servants. It goes on—"Or some or one of them, or to any *employer* or *employed*, other than the parties to a contract of service to which this Act applies as aforesaid, or to any case, matter, or *thing* arising under or relating to any contract of service or arising between employer and employed other than cases, matters, and things to which the said enactments respectively apply; and in respect of all contracts of service, employers, employed, cases, matters, and things to which this Act applies, the respective provisions of this Act shall be deemed to be, and are hereby substituted for such of the said enactments, or so much or such parts of the same as would have applied thereto if this Act had not been passed; but any proceedings at the passing of this Act pending under the said enactments, or any of them, may be continued and prosecuted, as if this Act had not been passed." Take, for example, the term "labourer" in the old Act; that means a labourer in its direct immediate sense, namely, a labourer in the field. [BRETT, J.—Under this Act the expression "*employed*" is defined, and when you come to what "*contract*" means, that is also defined. It is to be such a contract as is contained in the former statute.] I have had no opportunity of looking through all the statutes; it certainly does appear so at the first glance. [BRETT, J.—The same definitions would apply to the second count.] Yes; and perhaps to the third. [BRETT, J.—You admit that if this is a contract within the statute, if this is a contract for the breach of which there might be a summary conviction, there is evidence to go to the jury of a conspiracy to molest the master, or to control his free will in his trade by means of breaking, criminally breaking, these contracts.] I could not say that it is not a question for the jury. [BRETT, J.—I say then that there is evidence to go to the jury.]

Montague Williams.—I submit there is no evidence to go to the jury of any conspiracy, upon the ground that if the defendants were punishable at all, they were punishable singly as individuals under the Masters and Servants Act, there being no evidence as it stands at present of such a combination between these parties as to constitute a conspiracy. The evidence at present, on the part of the Crown, is this, that when the defendants went on Monday morning there was no intention on their part, nor were they aware of any intention, either to leave work or quit their employment. The mere fact of five hundred men standing together, without any previous concert, or without any evidence of previous concert, and three men saying "I don't intend to work," would not be sufficient evidence to constitute a conspiracy. [BRETT, J.—If they agree together, even at the last moment, that would be a conspiracy.] There is no evidence to go to the jury of any such agreement. The mere fact of certain members of the gang (say five hundred if you like) when addressed, saying one after the other, "I don't intend to work," unless there is evidence of previous concert, cannot be evidence of such a conspiracy as would be punishable by the Criminal Law, or in point of fact of any conspiracy whatever. [BRETT, J.—Do you mean, that there was no agreement, if five hundred persons, all in the same position, with regard to their masters, upon the allegation of some fact which concerns each of them both individually and collectively, leave the employment at the same moment? Do you think that is a fortuitous case of individual free will all round, that the same idea struck them all at the same moment individually? Do you mean that there must be evidence of some positive arrangement? Is not an agreement to be inferred from the acts of persons without any evidence of any positive agreement?] Could it be said, during the recent police strike, that the fact of a number of policemen being at the police station, and one and all at the same moment saying, without any previous consent, that they would not go out on duty, would be a conspiracy. [BRETT, J.—No. I don't say it would, I ask you.] The present case appears to me to be much the same thing. [BRETT, J.—Is there not something more here than the mere fact of five hundred men all leaving at the same moment? Are there not expressions used by some of them, and by some of the defendants, which seem to go further than that?] Singly, no doubt, they would be liable under the Masters and Servants Act, to be dealt with summarily. I do not dispute that, but there is no sufficient evidence of combination as would make them responsible to a criminal indictment for conspiracy.

Giffard, Q.C.—As to the two first counts being bad, I take it that the meaning of the two statutes quoted is (what the language of the sections themselves express) that where an Act is alleged, simply from the fact that it tends to restrain trade, to be unlawful, then the argument put forward might or might not be well founded. I don't say there is, but there might be, a colour for such an argument from the fact that there is a proviso with reference to a charge of conspiracy in restraint of trade in the Act. The fallacy arises from confusing what is in restraint of trade with that which is in restraint of trade and in restraint of something else as well, viz., in restraint of personal free will This indictment does not rest upon any principle that it is unlawful to restrain trade, but it rests upon the principle that it is unlawful to coerce a man's will by threats. Neither of the Acts quoted touch that point. The allegation here is that they conspired "contrary to the free will of Mr. Trewby," to force and extort from him a promise that he would do something that he did not wish to do, that they conspired to do that, and that the mode by which that conspiracy was to be carried out was by intimidation. [BRETT, J.—So far as the count on the face of it goes, it may be said that it is within this section, because it is by threats and menaces, and the section says, "whoever shall threaten or intimidate any person." It may be that on the face of this indictment it goes that length.] No doubt, but I submit that threats and intimidation do not, either under the statute, or at common law, necessarily mean threats of personal violence. [BRETT, J.—They do in this section. It says, "such threats and intimidations as would justify a justice of the peace doing so and so;" and on the face of the indictment it might be said that the threats and menaces there set out were the threats and menaces as contemplated by the statute.] The gist of this indictment in these counts is not at all the offence being in restraint of trade. The Act of Parliament does not apply to the present case, as no part of it contemplates a repeal of the Common Law. Suppose this had been a conspiracy to cut off the gas pipes, could it be said, if these men were to conspire that all of them should cut off the gas pipes and tell their masters that they were going to do so, such an act would not be within the words of the section? They could not under such circumstances be held to bail by a magistrate for any threats or personal violence, but could it be contended that they would not be indictable for conspiracy at common law? The argument on the other side must go, even if it has not done so already, to this extent, or it proves nothing, that the Act of Parliament has exhausted the law on the subject of conspiracy in relation to master and servant—that everything must be included in that section, and however illegal it might be at common law, all not included is rendered lawful, because omitted from the section. No authority has been quoted for such a proposition, and it certainly contravenes the ordinary rules of construction. [BRETT, J.—Is there not evidence of a molesting of the master with a view to coerce him to alter the mode of carrying on his business, as to the number of persons employed by him? What else was done to this master except interfering with his trade?] That is an interfering with his will. [BRETT, J.—His will in his trade.] The indictment would probably be good for molesting the master in restraint of his trade; if they combined to leave him at the just termination of his notice, that would have been in restrant of trade, and but for the Act of Parliament such persons might have been criminally responsible for doing it. [BRETT, J.—That refers to the third count. With regard, however, to the first count, which is "by threats and menaces, and other unlawful means," to take back a workman against his will.] The matter with which this statute is dealing is totally different. The meaning of it, I suppose, is something of this kind,

viz., to limit the definition of words which had been familiar in various Acts of Parliament, "molesting, obstructing, and so on," and then, I suppose, it occurred to the mind of the person who drew the statute that there might be evasion of the Act if the limitation of the language was such as only to apply to the acts of the individual, and that a person could evade its provision by charging a combination of these acts as a conspiracy; and hence the framer intended probably that any such evasion of its meaning and purport should not be made. If my contention is the right one, viz., that the Act has no reference to the conspiracy charged in the first count, then the proviso can have no operation. In other words, the common law conspiracy of combining by threats and intimidation to coerce a man's will is not at all within the statute. The real question is, whether this is a good count at common law or not. And so as to the second count. As to the third count, the objection is, that it is not proved by the evidence. [BRETT, J.—This is amply within the 30 & 31 Vict. As far as regards the questions for the jury, you are content, I suppose, that they should give their verdict on the third count.] On that or the tenth, which sets out a little more in detail the circumstances of the employment and the injury likely to occur from the coercion of the will. [BRETT, J.—I shall ask the jury on the separate counts. I am of opinion that the first count is a good count at common law, and that it is not touched by the statute to which you have referred. It is not suggested that the third count is not a good one. The only other point taken is, that there is no positive evidence that these contracts are such for the breach of which a criminal information would lie. No ground was taken for this other than that it was said the defendants were not persons employed within the meaning of 30 & 31 Vict. c. 341. I think that they were persons employed within that definition. I am further of opinion that, as the contract of employment was made between them as persons so employed and their masters, it comes within the statute, and that a criminal information would lie, and properly lie, for a breach of such a contract on the part of the servant. The exception, therefore, taken with regard to there being no evidence upon the third count fails, and there is evidence to go to the jury of a combination between the defendants and other persons.]

After *Straight* and *Williams*, *M.*, had addressed the jury.

BRETT, J., in summing up to the jury, said: The defendants are charged with having entered into a criminal conspiracy. It has been stated to you that the result of that conspiracy might have been, if not otherwise prevented, supposing it to have been successful, most lamentable to the public. And it has been stated to you on the other side, that even though that may be so, you ought not to allow yourselves, in finding your verdict of guilty or not guilty, to be influenced by any such consideration. I entirely agree with the latter part of that observation. You must not allow yourselves to be influenced in coming to a conclusion whether these defendants are guilty or not by the view that from there being an agreement between the defendants to cease work, it would have had a most lamentable effect upon the City and the public. I entirely agree that so far as these men were the servants of the gas company they had no obligation whatever with regard to the public; that they had no greater obligation to the public than anybody else had, than any of us. They had entered into no agreement with the public, the public paid them nothing for their labour, and they were under no further obligation to the public than any other of the Queen's subjects. The question which you will have to determine is whether, as servants of the gas company, they or some of them have been guilty of a criminal conspiracy. In order to come to that conclusion, you must answer in the affirmative or the negative the questions which I shall ask you. If you answer them in one way the defendants are guilty and it will be your duty to say that they are guilty. But if you answer them in another way it will be your duty to say they are not guilty. The definition of a conspiracy generally is this: If persons agree together to do some unlawful thing, and proceed to do it, they are guilty of a conspiracy; or if they agree to do a lawful thing by unlawful means, and proceed to carry out their agreement by those means, they are guilty of a conspiracy. I say, that if they proceed to carry them out (for it signifies not whether they do carry them out) they are guilty of conspiracy. Therefore, a conspiracy consists of an agreement between two or more persons—an agreement, observe—to do an unlawful thing, or an agreement to do that which is lawful by unlawful means. For instance, if two persons were to agree that one or both of them should shoot another, that would be clearly doing an unlawful thing; or if two persons should agree together that one of them should, by making false representations as to his means, induce a young woman to marry him, although the fact of inducing a young woman to marry is not an unlawful thing, yet if two persons were to induce a young person to marry one of them by false representations, that would be an agreement between them to do a lawful thing by unlawful means. These instances will enable you to understand the law as I am putting it to you. Therefore you will have to consider whether these defendants, or two of them, or more, have agreed together to do an unlawful act, or to do a lawful act by unlawful means. Upon an indictment for conspiracy, you cannot find one man only guilty, because, if one man only has been concerned in a matter, there is no agreement. But if five men are before you indicted for a conspiracy, you are not bound to find them all guilty; you may draw a distinction between them, you may come to the conclusion that two of them, or three of them, or that all five of them, are guilty. These men are indicted for a conspiracy, not only between themselves, as though they were the only conspirators, but they are indicted for conspiring among themselves and with other persons, although, as those other persons are not here, you cannot, of course, find those other persons guilty so as to make them amenable to the law. But it does not follow because other persons were guilty with the defendants, that if you think the defendants guilty, you should not find them guilty. You are to deal with their case alone, and with due regard to the case of each of them. Now, I shall ask your opinion as to this conspiracy in two forms. You have heard a discussion with regard to the mode in which this conspiracy is charged. It is charged in a different form, perhaps not very substantially different, but still in a different form, and I shall ask you, with regard to both, whether there is the one kind of conspiracy to which I shall first ask your opinion, or whether there is the other kind of conspiracy as to which I shall subsequently ask you. Now I shall first ask you this: was there an agreement, or combination, which is practically the same thing, between the defendants, or between the defendants or others, or by some of them, to force Mr. Trewby, or the Gas Company, to conduct the business of the company contrary to their own will by an improper threat, or improper molestation; and I tell you that there is improper molestation if there is anything done with an improper intent, which you shall think is annoyance or an unjustifiable interference, and which in your judgment would have the effect of annoying or interfering with the minds of the persons carrying on such a business as this Gas Company was conducting. It is not necessary, in order that there should be a conspiracy to molest, that any one should be personally molested. It is enough if you should think that a molestation was designed and agreed upon with an improper intent, and which in your judgments would be an annoyance and an unjustifiable interference, and would in your belief be likely to have a deterring effect upon the minds of the employers—that is to say, of Mr. Trewby or the Gas Company. I tell you that the mere fact of these men being members of a trade union is not illegal and ought not be pressed against them in the least. The mere fact of their leaving their work—although they were bound by contract, and although they broke their contract—I say the mere fact of their leaving their work and breaking their contract—is not a sufficient ground for you to find them guilty upon this indictment. This would be of no consequence of itself, but only as evidence of something else. But if there was an agreement among the defendants by improper molestation to control the will of the employers, then I tell you that that would be an illegal conspiracy at common law, and that such an offence is not abrogated by the Criminal Law Amendment Act, which you have heard referred to. This is a charge of conspiracy at common law, and if you think that there was an agreement and combination between the defendants, or some of them, and others, to interfere with the masters by molesting them, so as to control their will; and if you think that the molestation which was so agreed upon was such as would be likely, in the minds of men of ordinary nerve, to deter them from carrying on their business according to their own will, then I say that is an illegal conspiracy, for which these defendants are liable. That, gentlemen, is

as to the first set of counts. But this conspiracy is charged in another form, and in that other form the real charge is that they either agreed to do an unlawful act, or to do a lawful act by unlawful means; and it seems to me more naturally to fall under the latter class. I shall, therefore, ask you whether there was an agreement or combination between the defendants and others to hinder and prevent the company from carrying on and exercising their business, by means of the men simultaneously breaking the contracts of service which they had entered into with the company. And I tell you that the breach without just cause of such contracts as have been proved in this case is an illegal act by the servant who does it. It is an illegal act, and what is more, it is a criminal act—that is to say, it is an act which makes each of them liable to the criminal law—and therefore if they did agree to interfere with the exercise of their employers' business by simultaneously breaking such contracts—even if you were to suppose that to interfere with the exercise of their employers' business was a lawful thing for them to do—yet if they agreed and combined to do that lawful act by the unlawful means of simultaneously breaking all these contracts, they were then agreeing to do that which may be assumed to be a lawful act by unlawful means, and that would bring them within the definition of a conspiracy. In such case you will say, if you think that so it was, that they were guilty upon the second set of counts. Now, with regard to all this, what is the evidence? You find that these men and others, making up the number of five hundred men, were all in the employment of this Gas Company, and that Mr. Trewby was the foreman or person in authority managing for the company; and you find that there was another gas company called the Independent Gas Company, which carried on its business at Fulham; and the first thing that you know is that on the 28th of November a man at Fulham was discharged from the Gas Works there, and that in consequence of that there was a strike of sixty-two workmen at those works at Fulham. That is a circumstance which, because it is referred to, and because it may have been a motive and a ground of action, you must take notice of. Then you have it that, on the night of that same 28th of November, on the night of that same day when this thing happened at Fulham, in what they call the long spell at the works of the prosecuting company—that is, between twelve and half-past twelve at night—there was a meeting on the works of the night gang. The men who are on the night gang, some two hundred and fifty of them, do not work all the night, but they must remain on the premises all the night; but between twelve and half-past twelve is a time when they are not at work, and is the longest interval, as I should judge from the meaning of the terms "long spell," at which they are not at work during the night. There was a meeting on that night. On Friday night, the 29th of November, that is, the next night, the defendant Wilson came in and made a statement. He said that he was appointed delegate for that night, and must go to the society; that the meeting of the society would be held at some place near Finsbury Square. Now, what is a delegate? He is, as you have been told, a person—one of the workmen, or one of the members of the Trade Union—who is elected by his fellows at the works of a particular firm, to go and represent them (that is, the workmen in that employ), at a meeting of the Union, to agree with the other delegates as to what is to be done, and to come back and inform his own constituents what it is they are to do. Then, besides the dismissal of the men at the Fulham works, you have the dismissal of Dilley at these works. Dilley was dismissed because he had refused to do certain work which he was ordered to do, and the reason which he gave at the time was, that it was work which he was not allowed by his Union to do. Therefore, the case stands thus: the man at Fulham had been dismissed, upon which sixty-two men had struck; a man had been dismissed from these works for not doing work which he was not allowed to do according to the laws of the association to which he belonged. Wilson is a delegate from the workmen from these works to the Union; he goes to say that Dilley is to take his pay on Saturday morning, that is, at the end of the week, and if he was paid up to Friday night he was to take it and say no more about it. That was at first not very clear, but it was more fully explained afterwards. The meaning of what Wilson said you are to gather from these facts, that in every week the company keep back one day's pay. It is not stated why, but you know very often it is for subscription to reading-rooms and for the assistance of men when they are sick. I don't know why, but for some reason they keep it back. Not that they do not pay afterwards all that is due; but one day's pay is kept back out of the six that he may earn. If Dilley got his whole pay, therefore, it would show that he was discharged, not that he was to be kept on. If he was paid one day short, it would show that they were keeping him on, and then, so far as Dilley was concerned, there was no grievance at all; but if he got his whole pay then it would show that he was discharged. Now, you will see what was to happen. Wilson said that according to the opinion, not of the men in these works only, but of all the delegates where he had been (for he said this on the 29th and he must have been on the 28th at the delegates' meeting), that if Dilley was paid all his back time he was to take it, and no further notice was to be taken of it until they heard from the delegate meeting. He said further that something had passed at the delegate meeting which he would not divulge to any one, not to his own father if he was to rise out of his grave. Now, what do you infer from those facts, and from this statement of Wilson's? Nothing was to be done if Dilley was paid in full. If he was paid in full, it showed that he was discharged, and then there was a grievance. At the first blush it would be supposed that if he was paid in full and discharged, the men would be called upon to act at once. But no; the opinion of the delegates is that under these circumstances you are not to act at once, but what you are to do is to wait until you hear from the delegate meeting. And something passed at the delegate meeting which was secret; because, of course, the form of speech about his father was mere exaggeration on the part of Wilson; it meant that the decision of the delegates was to be kept secret. "You are not to act now, you are to act when the delegates send you word." Is not that the meaning of it? The inference you must consider is whether the meaning is not—"Don't you go out now, because there may be arrangements to be made. If this man is discharged, and you are so ordered by the delegates, you will have to go out; but it will be when all the other men who are members of the union, and not only you at these works, are going out at the same time." It is for you, of course, as a jury exercising your judgment fairly as between these defendants and the law, to say what is the meaning of it; and what is the meaning of that which Wilson said. The witness who proves it says, "I cannot say the other defendants were there. I believe that we were all there, but I can't say." Then he is cross-examined and he says, "Jones on the Thursday night had ceased to be a delegate, and Wilson was the delegate for that night, but he was elected as a delegate for that night only." If so, it was on the Thursday night that Wilson attended the meeting of delegates. Before that night Dilley had been discharged, or was likely to be discharged, or was threatened to be discharged, and the men at Fulham had been discharged. Then he comes back from the meeting of delegates, and on the 29th this is the information that he gives. Now we have what happened on the Monday morning. The first person that had notice, on the part of the employers, of anything likely to happen, was not Mr. Trewby, but the other man, Leonard. He says: "I am foreman of stokers. On Monday, the 2nd of December, I got to the works at ten minutes to six; when I got there I found a great many of the day gang there already; they were standing in the retort house and in the lobbies. I waited for some time to see if they would begin work. Some observations were made, and I then went and fetched Mr. Trewby." Then you have Mr. Trewby. He says the night gang go on at about five, and come off at about half-past five next morning; they work for about five hours. The change of the gangs takes place between six and seven; some come at six, and some at half-past six, and some at seven; those are for different portions of the process. On the 22nd of November, he says, the matter was reported about Dilley. "On Monday, the 2nd of December, Collier, the foreman, came to me about a quarter to seven in the morning. In consequence of what he told me, I went to the four retort houses on the works; this was a quarter to seven o'clock. I saw the night and day gangs there." Therefore when Mr. Trewby was sent for there must have been this unusual state of things happening; that is to say, that being a quarter to seven, when the night gang would have gone home to bed and the day gang to work, you have the whole five hundred men there; the night gang had stayed on and the day gang had arrived. Before the gang begins to work they usually change their clothing. None of the day gang had changed their clothing in order to go to work, so that you have two hundred and fifty men all doing that which was contrary to the rules. Mr. Trewby further says: "I asked the men what they wanted to see me about;" so that you see the message

which had been taken to him was not merely that the men were doing something which he was bound to look after, but that they wanted to see him; and the message sent was not that one man wanted to see him, not that anyone individual wanted to see him, but that they all wanted to see him; and when he goes to see them he asks what they wanted to see him about. He says: "I noticed there Jones and Wilson." You recollect, gentlemen, that Wilson is the man that had been to the delegates and made that statement on Friday night the 29th. "I noticed Jones and Wilson standing close to me; I noticed Webb there." Now Webb is a person who took a prominent part, but he is not one of the defendants; he is not here. "I noticed Webb there. They said they wanted to see me about Dilley's case. Webb was the first spokesman. I asked, 'Where are the day gang?' Jones said (one of the defendants): 'The day gang are all here.' I said, Why don't you go to work?" Now what was Jones's answer? Not "*I* have decided;" but "We have decided not to go to work until Dilley is reinstated." He said that in the hearing of the five hundred men who had sent to the superintendent, whom they called the governor, to see them. There they are in front of him. He says, "What do you want with me?" Webb stands forward as the first spokesman. Jones stands forward as a spokesman, and Jones does not say, "I have decided," but, in the face of all these five hundred men he says, "We have decided not to go to work until Dilley is reinstated." Wilson spoke to Mr. Trewby to the same effect; Webb spoke to the same effect. Therefore you have Wilson the defendant, Jones the defendant, and Webb, who is not here, stepping as it were forward in front of these other workmen, and the statement they all make is, "WE have decided not to go to work until Dilley is reinstated." "I said to them (that is, to Webb), as he belongs to the night gang, 'You should have left the works.' It was then past seven o'clock. I said, 'The time has now elapsed when the whole of you should have gone to your work. The Company have always behaved liberally towards you. They have conceded all you have asked from time to time, and I call upon all of you who are well disposed towards the Company to go on with your work.'" What was it that Jones said? "Yes, ask them that." Was that a sarcasm? Mr. Trewby says "I ask all of you who are well disposed to the Company to go to your work,' and Jones says, 'Yes, ask them that.' Not a man stirred, or separated himself from the rest. I asked all those who were well disposed to separate from the rest. I said both to Jones and Wilson, 'Am I to understand that you refuse to go on with your work until Dilley is reinstated?' They (that is Jones and Wilson) said 'Yes.'" Now you must consider what had happened and what Wilson said on the 29th. They said that Dilley's discharge and the Fulham matter had been put into one. Does that mean that they were to strike, unless the Fulham matter and Dilley's matter were both settled? And if it does mean that, who had put them into one? Was it the persons at these works only that had put them into one? The persons at these works, unless they were combined with others, had no interest in the Fulham works. Had they any combined action with others with regard to the Fulham works, and if so, where was that combination? You know that they sent a delegate to the society; you don't know whether there was a delegate from the Fulham works, but you must ask yourselves what was the meaning of Dilley's discharge and the Fulham matter being put into one. Mr. Trewby goes on:—"I said 'I have nothing to do with the affair at Fulham.' These things were said loud enough for the other workmen to hear. They all stood together, but the other workmen said nothing; I told them I would give them ten minutes for consideration; I said that loud enough for them to hear. I went away into the stokers lobby. I saw a man named Simmons in the lobby and in consequence of what Simmons said to me I asked, when I got back for Bunn and Ray, who are two of the defendants." You have heard of Wilson, Jones, and Dilley, now you hear of Bunn, and Ray, and Webb. You must exercise, of course, to some degree your imagination, so as to get at the truth of what was taking place. Bunn and Ray are there, according to their evidence, and they stand forward. Mr. Trewby proceeds: "I said to them, 'Am I to understand that you refuse to go on with your work, till Dilley is reinstated? They said, 'Yes.' I said, 'You know that you are acting illegally, that you can't leave your work without notice, that some of you are under a monthly agreement and some under a weekly agreement, and you must not leave your work without giving us proper notice. I will give you ten minutes more for consideration, and then you will let me know the result.' Jones said, 'Well, we may as well tell you at once, we have made up our minds.' I said, 'I will let you have ten minutes for reflection.' I then went away, and in about ten minutes I returned and Jones again said, 'We are of the same opinion.' Jones, Bunn, Ray, and Webb were there then; I won't be sure about Wilson being there then. The gangs were still there, not so many as there had been. Jones said, 'They were still of the same opinion I said, 'Very well! then I will reinstate Dilley, but I reinstate him under protest; now go on with your work.' Webb said, 'that they did not know what I meant by protest.' I said, 'Do you?' and he said, 'Yes.' I said, 'Perhaps you will explan it to them.' He said to the men (that is to the body of the men), 'The governor means to punish you.' He said to me, 'Will you withdraw that word?' I said, 'How can I? You insist upon Dilley being reinstated and I reinstate him under protest.' I said to the men (that is the body of men), 'Now go on with your work.' Webb said, answering for the men, 'We may as well tell you that we cannot go on with our work until the men at Fulham are let in.'" They go away again, you see, from Dilley's case and now it is that they cannot go on with their work until the men at Fulham who are out, the sixty-two men, are let in. Mr. Trewby said, "That is a matter with which I have nothing whatever to do, and I can do no further in it." They said they could not go to work until they had orders from their delegate meeting. I have pointed out to you what took place at the beginning. Wilson went to the delegates' meeting, and the order was, "Don't act at once, only act when you receive orders." Then all this contest, and then, at the end, what is said in the face of these men is, that they could not go to work until they had received orders from their delegates' meeting. Mr. Trewby further deposes: "Webb said that, and I left them to consult with my assistants and foreman. The night and day gangs then walked off in a body. I saw Dilley walking away with the other men." Therefore, you have here evidence that all these five defendants were present, and there is evidence of their being seen at different parts of the transaction during which they were present with the five hundred. You have now heard what took place. You have heard that the manager is sent for, that he goes, and there are all the men—those who ought to have been away from the works as well as those who ought to have been at work—collected, not prepared for work, but standing there as one body, and these defendants one after another acting as spokesmen between them. You have it that these two terms were insisted upon, namely, that Dilley should be reinstated, and that the Fulham men should be reinstated also, otherwise they would not go to work; and then it is said, "We cannot go to work until we have received orders from the delegate meeting;" and then upon the manager (who had agreed to reinstate Dilley, although under protest), refusing to take any responsibility with regard to the Fulham matter because he could not, all the men go off in a body leaving the works there without men to work them. There was no violence of demeanour, nor threatening of any sort by any of the men, that is to say, you are to take it that no threats of any personal violence were made, either with regard to Mr. Trewby, or with regard to the other workmen, except that which was hinted, but which was practically given up, and which I think, therefore, you ought not to take into account, namely, the threat to the Germans. You may take it substantially that whatever was done by these men was not done by threats or personal violence, either to the employers or to each other. The evidence of what was done is before you. It is for you to say whether this evidence proves to you that there was an agreement amongst these defendants, and practically amongst all the others, because, whether they were more or less willing is unimportant, they succumbed and did agree in the combination that unless their demands with regard to Dilley, and also perhaps with regard to the Fulham men, were complied with they would cease work. You have to say whether in your judgment that was not an agreement, not merely to cease work, but to cease work simultaneously and without notice, because as to this what the manager said is most important. He said, "You have no right to leave your work without giving us proper notice." Well, according to those contracts, they had not. What would have been the result if they had given notice? Why obviously that the company would have had an opportunity to get workmen somewhere else. But if they went away without giving notice, and simultaneously, what would be the consequence to the company?

You must ask yourselves whether, in all human probability, it would not have been that the company would have been left without workmen at all, and unable therefore to supply more than the quantity of gas which they had in store, and you have heard that they had not storage for more than a third of what they make in the day. That would seem to show that they could not rely on their storage for the supply of more than a single day. You then have the evidence of three or four men who were employed, Roffey and others, who tell you that they arrived at these gas works in the morning at their usual time, about six o'clock. Roffey says, "I saw all the defendants there when I arrived Dilley told me if I did not go with the rest I should be spotted. That is going further than anybody else has done; it is not merely an agreement to stop work, but it certainly is a kind of threat and annoyance—and a terrible annoyance—to this man from Dilley. There is, as far as I can see, no evidence that the others combined in that threat, but it is a lamentable thing that Dilley should threaten a man with that which for a workman is as great a crime as he could very well commit—a moral crime as against a fellow workman to say to him, Mind! you shan't follow your own will; if you do you shall be spotted;" that is to say, you shall be sneered at and be considered degraded by all the men of your own position and by your fellow workmen. Gentlemen, you must not allow that to weigh against the other defendants in this case, because there does not seem to be any evidence against them of a conspiracy to be carried out in that manner. Penn says, "I saw Dilley when I went; I stripped for work; Dilley asked where I was going; I said to work. He told me to put my clothes on, or I must put up with the consequence of it." But again, this is only Dilley. Byes said, "I went and saw Bunn there and he asked me where I was going; I told him I was going to work; he said, 'There is no work to-day, the work is stopped.'" Now you know the work was not stopped by the employers. The work was stopped, if by anybody, by the agreement of these men among themselves. "I asked him what for? he told me to go to the Castle Tavern, in the Barking Road, and I should know." This introduces a subsequent feature, which can only be of importance in order to lead your minds to this; was there a combination or agreement? We have here Bunn, and I think we have also Dilley, telling the man to go to the Barking Road. But that is not of so much importance as this. You will find that all the men did go to the Barking Road, and to a tavern called the Castle Tavern. So you have not only the fact of all the men leaving simultaneously, but you have also the fact of their all going to the same place, their rendezvous. I saw Jones and Ray there. I said to Jones, 'What is the matter?' He told me it was all through Dilley and the men at Fulham; he told me that Collier had asked him to call the men together to ask them if they would go to work and the men said no. Collier told him to ask the firemen to go to work and they said no." Then you have the German witnesses. About them I do not propose to trouble you, as I do not think under the circumstances they carry the case further. They are to the same effect, that they were told not to work. Now, gentlemen, it comes to my mind to be an essential matter for you to consider what was the position of the Gas Company, and for that purpose you must consider what was the relation between the Gas Company and the public. As between the Gas Company and the public, the Gas Company were supplying the whole of the city of London, and a great part of what is called the west end of London, with gas. And the Gas Company would be under contract, no doubt, to supply a great many persons with gas. But, whether they were under contract or not, you will ask yourselves whether the stoppage of such a large business, and the stoppage of it in that way—namely, that it would reduce the city of London and the suburbs to darkness—whether that would not be a tremendous blow to the company, the employers of these men. I say nothing of the public; but is it not a case in which the men, however little intelligent they might be, would have it in their minds that their employers never would run the risk and take the responsibility of putting the whole of London, or all that part of London which they supplied with gas, into darkness? Then what was the intent in their minds? Was it a wicked intent—that is to say in your judgment was it anything like fair dealing as between master and servant, and between man and man, that the men should agree simultaneously to stop work, and such a work, if they had the intent or the suspicion that by so doing they would put their masters under a terrible responsibility? I must ask you whether, in your judgment, this must not have been in their minds: "If we let our employers know or think we shall go off simultaneously we shall frighten them so with regard to the mode of carrying on their business, that they must alter their mode of doing their business, and therefore they must succumb to our wishes, namely, they must take into their employment the man they have dismissed, and whom they dismissed because it is admitted he refused to do what he was told to do, not upon the ground that it was not within his contract to do it, but upon the ground that somebody not his master had told him he was not to do such work. Is that in your judgment an improper interference with the mode of carrying on the business of the employers? And do you think, from the mode in which it was done, that it was in the minds of the men that it would be interfering with their master s will? Do you think that interference was made under such circumstances as would control the will of the masters of ordinary nerve under such circumstances? It is to obtain your view of this that I ask you, with regard to this first set of counts—Do you think that a conspiracy is made out against these men; first, that they tried to force the company to conduct their business contrary to the will of the company by an improper threat or improper molestation? Do you think that the defendants agreed together to force the company to conduct their business contrary to their own will—that is, to force the company to employ a man against their will, which man the company, unless so forced, would not employ? Then, do you think that was done by an improper threat or molestation? And in order to arrive at this, I tell you there would be an improper molestation if anything was done with an improper intent which you think was an unjustifiable annoyance and interference with the masters in the conduct of their business, and which in any business would be such annoyance and interference as would be likely to have a deterring effect upon masters of ordinary nerve. Therefore, do you think that the defendants agreed to force their masters to carry on their business in a manner against their will by improper molestation—that is to say, by annoyance or interference which in your minds was so unfair as to be unjustifiable, and which would in your judgments deter masters of ordinary nerve from carrying on their business as they desire, such molestation being of this kind: "Inasmuch as we know you are a gas company lighting a great part of the metropolis, we suggest to you this—Suppose we all leave work at the same moment; if we do, you cannot carry on your business; you must then throw every district into darkness. You dare not do that against your customers and against the public, and therefore you must yield to what we demand." Was that an improper interference, in your judgment, and was it such an interference as in your judgment would be likely to deter masters of ordinary nerve from carrying on their business according to their own will? If you think that, you must say that these defendants are guilty of the conspiracy. If you think that it is not made out in any one of the circumstances which I have put to you, you must say that the defendants are not guilty. Of course you are at liberty to draw any distinction between these defendants that you may think fit; but it was practically an agreement amongst all the workmen. As it seems to me, there is no distinction between any of the defendants, but the evidence is as nearly as possible equal as to them all; and your verdict will be, I think, that they are all guilty or none. Then comes the other point—Do you think that they agreed to interfere to hinder and prevent the company from carrying on and exercising their business according to their own will by those other means, namely, by simultaneously breaking all the contracts of service into which they had entered. It has been said that the breaking of these contracts would not be an offence, because they would not be within the Masters and Servants Act. Now, according to that Act, the word "employed" shall include any servant or workman who has entered into a contract of service with an employer. It is obvious that these men had all entered into a contract of service with their employers; but not only these men, for the evidence is that all the five hundred men had contracts of service with their employers. Then the Act goes on to say that the words, "Contract of service" shall include any contract whether in writing or by parol. Now, to say that these workmen had not entered into a contract by parol seems to me to be absurd. Some of them sign these agreements that have been put in, and others go to the works and are paid weekly wages, but with a notice put up in their pay-room that they are not to leave and that they are bound not to leave without a week's notice.

This is a contract of service, and it signifies not whether it was in writing or not. Then, having entered into these contracts, the Act says, "Whenever the employed shall neglect or refuse to fulfil his contract, he may be summoned before a magistrate and dealt with summarily." Therefore, the breach of such a contract so made is an offence, and the breach of that contract, I tell you, is an unlawful act. Now the breach suggested is this. They were all entitled to leave the service with notice, but none of them were entitled to leave without notice, and I have pointed out the importance of that in this particular case. If they leave with notice, their places can be supplied; if they leave without notice, that is to say, simultaneously—the five hundred men—their places cannot be supplied. If you think, therefore, that they had entered into an agreement not merely to break their contracts, but to break them simultaneously, do you or do you not think, even if they might break their contracts and cease to work, and even if they might agree to do it—do you or do you not think that was the doing or agreeing to do a lawful act, that is, to leave the employment? Even if you assume it to be a lawful act, do you think this was an agreement to do that lawful act by unlawful means, that is to say, by breaking their contracts—by leaving without notice at one and the same time? And in order to show the spirit and purpose with which they did it, do you think they did it with evil intent, that is, the evil intent of forcing their masters to carry on their business in a way which they knew was contrary to the will of their masters? If they did, you will say they are guilty of a conspiracy; if you think they did not, you will say that they are not guilty. Therefore, if you find them guilty of one of these conspiracies, you must say that they are guilty, and perhaps you will tell me of which, It does not at all follow that you may not be of opinion that they are guilty of both conspiracies, and if so you will tell me. As to any trouble, or annoyance, or anger, which they may have caused to the public, you must not take that into account. I mean, you must not find them guilty because you think them wicked in that respect. Still, you must take this into account: What had they in their minds with regard to their masters? If you think they are guilty of these conspiracies with regard to their masters you will say so; but if, upon consideration, you doubt it, with regard to all or any of the defendants, you will, of course, give them the benefit of that doubt, and say that they are not guilty. Gentlemen, you will try this case without prejudice, and without any view of what the result may be; and you will say whether, within the law as I have laid it down to you, they are guilty of one or both the conspiracies. If you think they are, you will say that they are guilty; if you think they are not, of one or either, you will say that they are not guilty.

The jury retired at 4.37 to consider their verdict, and returned into court at 4.55, finding all the defendants guilty.

BRETT, J.—Do you find them guilty of both kinds of conspiracy that I put to you?

The Foreman.—We find them guilty on the 2nd.

BRETT. J.—Of the second kind of conspiracy, you mean?

The Foreman.—Yes, my lord.

BRETT, J.—And not of the first?

The Foreman.—Yes.

BRETT, J.—May I ask on what account you recommend them to mercy?

The Foreman.—On account of their great ignorance and being misled, and their previous good character.

Sentence—Twelve months' imprisonment with hard labour (a).

(a) Her Majesty, by the advice of the Home Secretary (the Right Hon. H. A. Bruce), subsequently remitted eight months' imprisonment, and reduced the sentence to four months' imprisonment with hard labour.

EXTRACT FROM *The Times*, MAY 20TH, 1905.

LAW REPORT, 19TH MAY.

SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(*Before* THE MASTER OF THE ROLLS, LORD JUSTICE MATHEW, AND LORD JUSTICE COZENS-HARDY.)

THE DENABY AND CADEBY MAIN COLLIERIES (LIMITED) v. THE YORKSHIRE MINERS' ASSOCIATION, AND GEORGE CRAGG JOSEPH SMITH, ENOCH KAYE, JOHN WADSWORTH, WILLIAM PARROTT, FRED HALL, JOHN NOLAN, AND HENRY HUMPHRIES.

This was an application by the defendants for a new trial or for judgment in an action tried before Mr. Justice Lawrance and a special jury in January and February last year. The case was reported in *The Times* of 28th, 29th and 30th January, and 2nd, 3rd, 4th, 5th, 6th, 9th, 10th and 15th February, 1904. The plaintiffs, who were colliery proprietors, brought the action against the defendant association, the trustees of the defendant association, and other officers and agents of the association to recover damages for having by wrongful and illegal means procured the plaintiffs' men to go out on strike. The plaintiffs by their pleadings claimed—(1) damages for a conspiracy to induce the men to break existing contracts; (2) damages for wrongfully inducing the men not to enter into new contracts; (3) an injunction to restrain the defendants from repeating the above wrongful acts and from paying away the funds of the association illegally. The defendant association pleaded denying liability, and contended that, if the contracts had been broken, they were not broken by any act on the part of the defendant association, and, further, that, if the contracts were not broken, the men having been willing to go back, the plaintiffs suffered no damage. The other defendants, save and except Nolan and Humphries, who put in no defence, pleaded a general denial of the plaintiff's claim, and contended that the plaintiffs had not suffered any damages by reason of any wrongful or illegal acts of these defendants. At the trial certain questions were left to the jury, which, with their answers, were as follows:—(1) Did the defendants Nolan and Humphries, or either and which of them, unlawfully and maliciously procure the men to break their contracts of employment by going out on strike on 29th June without giving notice?—Yes. (2) If you answer the first question in the affirmative, then were Nolan and Humphries, or either and which of them, in so doing, purporting to act as agents of the association and for its benefit?—Yes. (3) Did the members of the committees of the Denaby and Cadeby branches, or any of them, unlawfully and maliciously procure the men to break their contracts of employment by going out on strike on 29th June without giving notice?—Yes. (4) If you answer the third question in the affirmative, then were the members of the committees in so doing purporting to act as agents of the association and for its benefit?—Yes. (5) Did the defendant association, by its executive council or by its officials, ratify the acts of Nolan and Humphries, or of the members of the committees, in so procuring the men to break their contracts?—Yes. (6) Did the defendant association, by its officials or by the members of the committees of Denaby and Cadeby branches, maintain, or assist in maintaining, the strike by unlawful means—that is to say (*a*) by molesting or intimidating men who were working for the plaintiffs, with a view of inducing them to cease from so working?—Yes; (*b*) by inducing, or attempting to induce, men who were willing to enter into contracts of service with the plaintiffs or to work for them to refrain from so doing?—Yes; (*c*) by the grant of strike pay against the rules of the association?—Yes. (7) Did the defendant Wadsworth, Parrott, Frith, and Hall, or any and which of them, maintain, or assist in maintaining, the strike by unlawful means—that is to say, by any and which of the above means?—Not personally, but as servants of the association. (8) Did the defendants, or any and which of them, conspire with each other or with workmen in the employ of the plaintiffs to do any and which of the matters mentioned in question 6?—Yes. (9) Did the defendants, or any and which of them, unlawfully and maliciously conspire together, and with workmen formerly in the employ of the plaintiffs, to molest and injure the plaintiffs in the carrying on of their business, and were the plaintiffs so molested and injured?—Yes. The learned Judge gave judgment for the plaintiffs in accordance with the findings of the jury for damages to be assessed. The defendants appealed as above, and the arguments on the appeal were heard during the latter part of the last sittings and at the beginning of the present sittings, and are reported in *The Times* of 14th and 19th April, and 4th May.

Mr. Rufus Isaacs, K.C., Mr. Danckwerts, K.C., and Mr. Clement Edwards appeared for the Yorkshire Miners' Association and the trustees; Mr. Atherley-Jones, K.C., Mr. S. T. Evans, K.C., and Mr. Compston for other defendants; Mr. J. Eldon Bankes, K.C., Mr. Montague Lush, K.C., Mr. H. T. Waddy, and Mr. H. S. Cautley for the plaintiffs.

The COURT, having taken time to consider, delivered judgment to-day, allowing the appeal and ordering judgment to be entered for the defendants, the Master of the Rolls dissenting.

The MASTER of the ROLLS, in delivering judgment, said that this was an appeal by the defendants from a judgment entered against them by Mr. Justice Lawrance in a case tried before him and a special jury. The plaintiffs were the owners of the Denaby and Cadeby Main Collieries. The defendants were a trade union, its trustees and principal officials, and the officials of the Denaby and Cadeby branches thereof. The action was brought to recover damages for a conspiracy by the defendants other than the trustees to injure the plaintiffs by bringing about a strike among their workmen involving breaches of their contracts of service with the plaintiffs, and, as a distinct cause of action, for conspiring to maintain the strike by unlawful means, embracing intimidation, molestation, and the illegal payment of strike money. The trial occupied many days; and, the jury having answered in favour of the plaintiffs a number of questions carefully formed to cover all the points involved, the learned Judge gave judgment for the plaintiffs for damages to be assessed as agreed between the parties. The defendants, other than the two branch officials who did not appear, now applied for judgment or a new trial on the ground that there was no evidence to go to the jury, that the verdict was against the weight of evidence, and that the learned Judge misdirected the jury. The collieries in which the strike took place formed two out of a large number of branches which together made up the association, and the first group of questions put by the learned Judge related to the procuring or bringing about the strike as distinguished from the maintaining it after it had been begun, to which latter point another series of questions was addressed. Very different considerations applied to these two groups. First, as to the initiation of the strike. It was not disputed by the defendants that this was illegal. The men were under contracts requiring fourteen days' notice to determine them, and they left their work without notice. The strike was also resolved upon in flagrant disregard of the rules of the branches, which provided for the method and conditions by which such resolutions were to be taken. It was hardly, if at all, disputed that the strike so procured was the work of the officials of the branches and the evidence that such was the case was in fact overwhelming. The responsibility of the branch officials was, however, only material from the plaintiffs' point of view as establishing or tending to establish the responsibility of the union itself, whose liability was alone of any pecuniary importance. It was, accordingly, strenuously pressed upon the Court by the plaintiffs' counsel that the officials of the branch were really by the constitution of the association the agents of the union itself, to whom the duty of organising and superintending strikes was delegated, and that, therefore, the union was responsible for their acts. In his opinion the rules did not admit of this contention. Their effect

seemed to be to leave to the branches the right to determine for themselves whether they would strike or not, though the union, if it sanctioned the strike, was empowered to grant strike pay to the strikers. If the rules did not make the union responsible for the acts of the branch officials, he agreed with his colleagues that they did not become liable by ratification. He thought there was no evidence of "purporting" on the part of the branch officials to act for the union, and he was not prepared to say, since the decision of *Keighley, Maxstead & Co.* v. *Durant*, in the House of Lords (1901, A.C., 240), that purporting was not a necessary condition of possible ratification, even in the case of a tort, nor was he satisfied that ratification was legally *intra vires* of the association, and therefore possible. See *Poulton* v. *London and South Western Railway Company* (L.R., 2 Q.B., 534). The case upon the rules was more fully dealt with by his learned brothers, with whom on this part of the case he agreed. It followed, therefore, that on that part of the case which rested on the responsibility for the initiation of the strike, the plaintiffs failed as against the association and its officers. Here, he regretted to say, he parted company from his brethren, and had the misfortune to differ from them as to the second part of the case. He was of opinion, as to the issues raising the question of the responsibility of the union for the maintenance as distinguished from the initiation of the strike, that there was evidence fit for the consideration of the jury of concerted action between them and the officials of the branch to maintain the strike by illegal means. It was not his province to decide anything more, unless it was made out that there was misdirection which might have affected the verdict. Of this, on this part of the case, he could find no trace. On this second branch of the case it became necessary to examine the evidence in somewhat greater detail. His Lordship dealt at length with the facts of the case subsequent to the commencement of the strike, referring to the various meetings and the resolutions passed at them, and also reading passages from some of the speeches. The means actually used to maintain this strike were certainly illegal, and, if any other element was required to fill up what was covered by "maliciously" in the wrong charged, it seemed to him impossible to say that there was no evidence of malice to go to the jury, evidence founding the inference that a colourable pretext rather than an assured opinion was sought and acted upon by the defendants, and that in their eagerness to accomplish the object which they had in view they allowed their judgment to be warped and patent facts to be ignored in coming to their resolution. But even if he was wrong in this view, there were other considerations which in his judgment could not have been withdrawn from the jury. The payment of strike pay week by week necessarily kept the association in continuous touch with the strike, and there was evidence of constant communication between the branches and the central authority; and in critical emergencies—*i.e.*, when the zeal of the strikers was felt to be flagging—the aid of the central body was sought, and leading members of the council were sent down to encourage and advise, and speeches were delivered by them and in their presence, which he thought could not be withheld from the jury, speeches which contained no word of rebuke for illegalities already committed and which must have been known to the speakers, but which did contain allusions to "rats" and "blacklegs" which might well be construed as incitements to intimidation. There was clear evidence that not only was this strike illegal in its inception, as already pointed out, to the knowledge of the defendants, but that it was carried on by illegal means—intimidation by large bodies gathered to intercept and beset those workmen who had gone to work, or were returning, or who wanted to go to work, violent language and threats, and in some instances actual physical violence. It could not, he thought, be disputed that the officials of the two branches were prominent in encouraging the illegalities he had referred to, and, as he had already pointed out, there was evidence of a common purpose shared by the officials of the central authority and of the branches to assist in maintaining the strike. Was it possible, then, for the former, while furnishing from week to week the most powerful support in the shape of strike pay, to wash their hands of all responsibility for the methods adopted by their confederates in carrying out the common purpose? The inferences to be drawn from the proved facts appeared to him to be essentially for the jury and not for this Court, and to withdraw them from their cognisance would be to usurp their functions. He was of opinion, therefore, that Mr. Justice Lawrance was abundantly justified in leaving the case to the jury, and that it was quite impossible for this Court to enter judgment for the defendants. As to misdirection, he thought that with respect to the questions relating to that part of the case as to which he held there was evidence to go to the jury, there was nothing to complain of in the Judge's direction or in the questions put. In his opinion, therefore, the plaintiffs were entitled to retain their verdict in respect of the causes of action dealt with in question 6 and those that followed it, and against all the surviving defendants. As, however, his brothers were of a contrary opinion, this appeal must be allowed with costs, and judgment entered for the defendants.

Lord Justice Mathew read a judgment, in which he said that, with regard to the contention that the defendants could be regarded as an association for carrying on a business, and that they carried on their so-called business in defence of workmen by means of strikes, and that this operation was in all cases entrusted to the branches, an ordinary firm carrying on its business for profit was in no way analogous to a trade union. The true nature of the trade union and the rights and obligations of its members must be ascertained not from any superficial comparison with ordinary partnership, but by an examination of the rules under which the trade union was constituted. But it was argued that, even if this were so, the rules showed that the branches were agents of the association. This position seemed to him to be untenable. The constitution of the association under the rules seemed to him to be this—the units were the branches, of which there were about 150. Each of those was independent of the others, and was in itself a small trade union. It had its officers and its rules, and the members of each branch were entitled to strike when their grievances seemed to them to justify that course. The funds collected by each branch, after deducting the necessary expenses for carrying on its affairs, were remitted to the charge of the council, a body consisting of delegates from each branch. The council were assisted by a secretary and other paid officials, whose ordinary duty was to assist in the settlement of any differences that arose between the members of each branch. When a strike was threatened or took place the officials of the council were charged with the duty of endeavouring to bring employers and workmen together and settle their differences amicably. The principal duty of the council was not to promote, but to endeavour to prevent strikes. The council had power out of the funds in their hands to grant strike pay where it was considered that the workmen were justified in refusing to work until their complaints had been considered by the employers and a reasonable arrangement had been come to. The rules gave the council no control whatever over the refusal of the workmen to continue in the service of the employers They had no power to prevent or to terminate a strike. In that respect each branch was independent of the council. On the other hand, the branch could not procure for itself strike pay. That was a matter with which the council alone could deal. That seemed to him to be the result of the rules, so far as they were material. The evidence showed a course of business in no respect inconsistent with their terms. But it was contended for the plaintiffs that the agency of the branches, if not disclosed in the rules, was established by the evidence of what took place after the strike had begun, and it became necessary to state how and why the strike originated. His Lordship then discussed in detail the evidence, and said that the bag dirt question seemed to have been the immediate cause of the strike on June 29th, and that if the evidence relied upon by the defendants was believed the charge of conspiracy to procure the strike seemed to have been answered. But the plaintiffs' counsel insisted that it was altogether untrustworthy, and that the true explanation of what had happened was that the strike was one step in the campaign by the association against the reduction of wages directed by the award of Lord James of Hereford, and that the alleged grievances of the men in the plaintiffs' collieries were a mere pretence, the strike not being their act, but the act of the association. Having referred to the evidence upon this point, his Lordship said that there was no ground for the allegation that the strike in question was referable to Lord James's award. There might have been some dissatisfaction among the miners, but the men acted loyally on the decision of Lord James. The next point that was made in proof of the alleged conspiracy was the fact that the men sent by the council on three occasions ostensibly to assist

in bringing about a settlement were in fact instructed to encourage the men to continue the strike. His Lordship could see no reasonable ground for this conclusion. The men directed by the council to attend the meetings of the men at the collieries could not avoid hearing strong denunciations of the contemptuous treatment which the men considered that they had received from the plaintiffs and their manager. The unreasonable complaint was made by counsel for the plaintiffs that the representatives of the council did not take sides with the employers and censure the men for striking. Their doing so would not have helped to bring about a peaceful solution. The further contention of the plaintiffs was that the association, if they did not procure, at any rate encouraged the strike. It was said that they must have known that many of the men were unwilling to leave their work, but that they were coerced by their fellows. It was said that there was molestation and intimidation of which the officials of the council must have been aware. It was admitted that up to July 14th there was only one case of personal violence. A man named Berry was struck with a stone flung by some one in the crowd. For that period there was no evidence of more than the ordinary incidents of a strike, which would be easily exaggerated into evidence of more than was permissible. The limits of lawful picketing were uncertain. It was not shown that any considerable number of the men were unwilling to join in the strike in the early part of July. By July 14th there were only some sixty men at work at the Cadeby and twelve at the Denaby Colliery. They were not employed in raising coal, but in keeping the ways clear. At a later period, when it was clear that the pits were about to be closed, there was more disturbance. But, whatever complaints might be made of the unruly conduct of the workmen, there was no evidence that the association authorised what the men were doing. The council could exercise no control over the men, who were as obstinate as their employers. But the chief ground upon which the complicity of the association in the original strike and its consequences was sought to be established was what was described as the illegal allowance of strike pay. That the action of the council as between them and the members of the association was *ultra vires* had been settled by the House of Lords in *Yorkshire Miners' Association* v. *Howden* (21 *The Times* Law Reports, 431). It was illegal also, but only in the sense that a breach of trust or a breach of contract was forbidden by law. It could not be disputed that the right of the men to obtain assistance from the council was a difficult question. There was reasonable ground for the contention that the council had power after the strike had taken place to assist the men under rule 64. Grave doubt upon the point was not wholly removed by the argument in the Court of Appeal in Howden's case. It was contended for the plaintiffs that the grant of strike pay sanctioned the conduct of the men and made the association responsible from June 29. But there seemed to be an answer on two grounds. First, as a matter of law, the association could not sanction an act which was *ultra vires*. They could not ratify what they had no power to do. Secondly, what was done by the council was not an admission that the original strike was undertaken on behalf of the association or a sanction of acts by those who were admitted to be agents. The resolution of the council was that strike pay might be granted although the branches had not acted on behalf of the association. It was not contended that the council had been guilty of bad faith or any intention to cause injury to the plaintiffs. It was insisted for the plaintiffs that it was immaterial whether the payment of strike pay was made in good faith. The argument of the plaintiffs' counsel seemed to him to involve the contention that the grant of strike pay, whether in accordance with the rules or not, was evidence of conspiracy to injure the employers. If there had been a conspiracy with any such object, Mr. Pickard must have taken the principal part. But the learned counsel for the plaintiffs paid a tribute to the integrity and ability of Mr. Pickard, and did not suggest that he had said or done anything during the long struggle with the plaintiffs which was in any way discreditable to his memory. It seemed to him that the grounds upon which the members of the association were charged with a conspiracy to procure a strike wholly failed. But an alternative view was put forward. It was said that the subsequent incidents, when put together, supplied evidence of another and a later conspiracy starting from July 24, when strike pay was granted. But at that date the contracts had been determined and the position of the plaintiffs was this. They were entitled to damage from each workmen for his breach of contract. They could replace the men discharged and recover possession of the houses they occupied, but they could not compel the men to continue to work for them. In this state of things it seemed to him idle to talk of a conspiracy to deprive the plaintiffs of the services of the workmen whom they had themselves discharged. If it was sufficient evidence of a conspiracy to injure the employers that strike pay had been granted, it was difficult to see how trade unions could continue to exist. This alternative view of the liability of the association seemed to him to fail. Much comment was made upon the obstinacy of the men, but it was well to bear in mind that the dispute about bag-dirt had gone on for many years, and had at times become so angry that it was only by the constant efforts of the council that a strike was prevented. Why the efforts which were made after the strike were ineffective to bring about a settlement might perhaps be accounted for by the fact that the plaintiffs were fighting the men in the interests and on behalf of a union of employers, the South Yorkshire Coal Owner's Association. It appeared from Mr. Chambers's evidence that the plaintiffs were advised from the first of this association of employers, and obtained from them a contribution towards the loss which followed upon the strike. No settlement could have been come to without the sanction of that association. Mr. Chambers admitted that he had given as his reason for not meeting a deputation of the men that he was bound down by the Coal Owner's Association. In his opinion there was no evidence upon which the jury could reasonably have decided against the defendants, and the judgment should be reversed, except as against Nolan and Humphries, and entered for the defendants.

Lord Justice Cozens-Hardy read the following judgment:—In this action the plaintiffs, who are a colliery company seek to recover damages occasioned by reason of a strike. The defendants are (1) the Yorkshire Miners' Association (hereinafter called the union); (2) the trustees of the union who are not charged with any personal misconduct; (3) Wadsworth, Parrott, and Hall, who are three of the officials and members of the executive committee of the union; and (4) Nolan and Humphries, who are delegates of the Denaby and Cadeby branches of the union. Nolan and Humphers have not appeared. The defendants are sought to be made liable on the ground of conspiracy. Judgment has been entered against all the defendants for damages to be assessed. The defendants have appealed, and contend that judgment should be entered for them, or alternatively that there should be a new trial. Before dealing with the facts it will be convenient to consider the nature of the constitution of the union and the precise position of the branches. The union comprises about 63,000 members, divided into about 150 branches. Its objects include:—(*g*) To provide a weekly allowance for the support of members and their families who may be locked out or on strike, and to resist any unjust regulations in connection with their employment. The supreme government of the union is vested in a council consisting of a president, general secretary, financial secretary, and a general treasurer, and one delegate elected by each financial branch. Provision is made in rule 12 for taking a registered vote throughout the entire union on the question of (*inter alia*) "the adoption or prolongation of a strike." There is an executive committee of 13 members, to consider and decide upon emergency business, but (rule 29) the executive committee cannot decide upon questions relating to strikes or lock-outs. Each branch has its own president, secretary, treasurer, and committee. The branch treasurers' duty is to forward to the general treasurer of the union all monies not required for immediate purposes of the branch. There is one general fund for the union, which is to be applied (*inter alia*) to the relief of those members and families who may have been thrown out of employment by strikes or lock-outs (rule 53). Rule 64 provides for strike pay to members "permitted to cease work" by the sanction of the union in accordance with the rules. Rule 65 provides that in the case of a lock-out the members of the branch affected shall be supported after the same rate as the members on strike. But neither strike pay nor lock-out pay begins for six days (rule 69). Rule 72 provides that no branch shall be allowed to strike or leave off work with a view of causing the works to stand unless sanctioned by two-thirds of the members composing the branch, when such strike shall be determined by registered ballot. Now under this constitution it is clear that it is competent to the union to order or adopt a strike. Such action would ordinarily be taken only where the interests of the members as a whole are considered

to be affected. But it is equally clear that it is contemplated that a branch, as distinct from the union, may strike. In that case great care is taken that the branch members shall have no claim for strike pay out of the union funds unless certain forms are complied with and the sanction of the council has been obtained. A local strike will naturally be engineered by the local branch officials. But, in my opinion, the branch officials are not agents of the union, with authority to bind the union by their acts in the matter of a local strike. Such agency must be founded on something outside the rules, and its existence must be proved by those who rely upon it. The evidence in this case is very voluminous, but I do not propose to discuss it in detail. It will suffice to state the conclusions at which I have arrived:—(1) The strike of the Denaby and Cadeby colliers on June 29 was procured and brought about by the Denaby and Cadeby branch officials who induced the men to break their contracts of service by leaving work without giving fourteen days' notice. This is the finding of the jury in answer to the first and third questions. (2) The branch officials were not agents of the union in bringing about the strike. In so far as the answer of the jury to the second and fourth questions asserts the contrary, the rules do not justify the finding, and there is no evidence outside the rules of any such agency in fact. (3) The union, by its council or executive committee or officials, did not ratify the acts of the branch officials in procuring or bringing about the strike. On the contrary, they endeavoured to induce the men to resume work. The minutes of the council and executive committee of the union and the letters written by Mr. Pickard, the late secretary, are clear on this point; and I see no reason for suggesting that they were artfully framed for the purpose of representing the exact contrary of the truth. In my opinion, there is no evidence to support the finding of the jury in answer to the fifth question. I do not pause to consider whether ratification of the original tort was legally possible, the branch officials not having "purported" to act as agents of the union. (4) The strike thus commenced was continued and maintained by the branch officials and branch members by unlawful means—viz., by molestation and intimidation. But there is no evidence that this molestation or intimidation was directed or sanctioned by any of the officials of the union. Great stress was laid on language used by some of the speakers at meetings of the men on strike. It is impossible to deny that several of the local leaders indulged in inflammatory rhetoric which probably increased the intimidation and exasperated the quarrel. On the other hand, the speeches of the officials sent down by the union were temperate and free from objection. I decline to attach importance to the unwise use, at a very late stage of the strike, of a particular adjective, "devilish," even although uttered in the presence of an excited crowd of colliers. No illegal act followed this utterance. (5) The strike was continued and maintained by the branch officials and branch members, by pickets and by inducing the colliers who went out on June 29 not to enter into fresh contracts of service, and also other men not to enter into contracts of service. In so far as this was free from molestation or intimidation, it was not an unlawful means, and the finding of the jury in answer to question 6*b* cannot be supported as a ground of action. (6) The strike was continued and maintained by the grant of strike pay by the union in breach of the rules of the union. The strike collapsed directly the strike pay was stopped by the injunction granted in the action of "Howden *v.* Yorkshire Miners' Association." In my opinion, this is the only act of importance as against the union. Unless this act suffices, I think that there was no evidence on which the jury could find the union liable. It is important to observe that the resolution to grant strike pay was not passed until July 24, and it was only paid as from July 17. The contracts of service had, in any view been terminated before that date, and the strike was, therefore, not then open to the original illegality. It was a lawful strike, unless and in so far as it was continued and maintained by intimidation or molestation or other unlawful means. It remains to consider whether this grant of strike pay was in the circumstances a tortious act rendering the union funds liable to pay damages to the colliery company from the time when it was resolved that strike pay should be given. On principle it is not easy to see how a gift of money to strikers by a man or a body of men can involve any such liability, even though the strikers may, without the sanction of the subscribers, be guilty of molestation and intimidation in the conduct of the strike. Nor will the mere knowledge of the subscribers that such unlawful means have been used or are likely to be used by the strikers alter the legal position. Thus far I have assumed that the money belongs to the subscribers, to be disposed of at their own free will. Can it make any difference that the subscribers, being trustees, have improperly taken the money out of a trust fund? This would be a breach of trust as between themselves and their beneficiaries, but I fail to appreciate the argument that it can give any further right to the employers, to whom the source from which the money is derived is a matter of indifference. I am not prepared to hold that, in the case last supposed, the persons who subscribed the money could be considered to be maintaining the strike by unlawful means. The members of a trade union are not, I think, in any worse position by reason of their having taken advantage of the Trade Union Acts. It follows that, in my opinion, the action must fall against the union. The case against Wadsworth, Parrott, and Hall cannot be maintained if the case against the union fails on the ground above stated. They acted only in their character as agents of the union. They were not guilty of any independent tortious act. The case against Nolan and Humphries is abundantly clear, but as they have not appealed, and are, I presume, without means, this is not a matter of importance. In my opinion, therefore, the appeal should be allowed and judgment entered for all the defendants except Nolan and Humphries.

The COURT, upon the application of Mr. ISAACS, ordered that the sum of £75,000, which had been paid into a bank by the defendant association in joint names as a condition of obtaining a stay of execution pending the appeal to the Court of Appeal, should be paid out to them. The Court further ordered, upon the application of Mr. LUSH, that all the cost which the plaintiffs were liable to pay to the defendants under the order of the Court of Appeal should be paid to the defendants' solicitors upon their undertaking to repay them in the event of an appeal to the House of Lords being successful.

1896. No. I. ch. p. 811.

J. LYONS & SONS *v.* WILKINS.

Trade Union—Strike—Picketing—Inducing persons not to contract with Plaintiffs—Intent to Injure—Malice—"Watching or Besetting"—Interlocutory Injunction—Trade Union Act, 1871 (34 & 35 *Vict. c.* 31)—*Conspiracy and Protection of Property Act*, 1875 (38 & 39 *Vict. c.* 86), *Sections* 3, 7.

The picketing of the works or place of business of an employer, for the purpose of persuading people, whether masters or men, not to work for him, is a "watching or besetting" with a view wrongfully and illegally to compel persons to abstain from doing a lawful act, within the meaning of Section 7, Sub-Section 4, of the Conspiracy and Protection of Property Act, 1875.

The defendants, officers of a trade union, ordered a strike against the plaintiff manufacturers and also against S., a person who made goods for the plaintiffs only; and their pickets by their direction watched and beset the works of the plaintiffs and of S., for the purpose of persuading work-people to abstain from working for the plaintiffs.

The Court of Appeal (affirming the decision of North, J.) *held*, that this kind of picketing and the strike against S. for the indirect purpose of injuring the plaintiffs were illegal acts, and they granted an interlocutory injunction to restrain the defendants and their agents from watching or besetting the plaintiffs' works for the purpose of persuading or otherwise preventing persons from working for him, or for any purpose except merely to obtain or communicate information; and also to restrain the defendants from preventing S. or any other persons from working for the plaintiffs by withdrawing his or their workmen from their employment.

The Conspiracy and Protection of Property Act, 1875, discussed and explained.

Ch. D. 1899. I. p. 255.

J. LYONS & SONS *v.* WILKINS.

Trade Union—Picketing—"Watching and Besetting"—"Wrongfully and without legal authority"—Injunction—Criminal Law Amendment Act, 1871 (34 *and* 35 *Vict. c.* 32) *s.* 1—*Conspiracy and Protection of Property Act*, 1875 (38 *and* 39 *Vict. c.* 86), *Sections* 3, 7.

Per Lindley, M.R. and Chitty, L.J.; to watch or beset a man's house, with the view to compel him to do or not to do that which it is lawful for him not to do or to do is, unless some reasonable justification for it is consistent with evidence, a wrongful act: (1) Because it is an offence within *s.* 7 of the Conspiracy and Protection of Property Act, 1875; and (2) because it is a nuisance at common law, for which an action on the case would lie; for such conduct seriously interferes with the ordinary comfort of human existence and the ordinary enjoyment of the house beset: *Bamford* v. *Turnley* (1860) 3B. & S. 62; *Broder* v. *Saillard*, (1876) 2 Ch.D. 692, 701; *Walter* v. *Selfe* (1851) 4 De G. & Sm. 315; *Crump* v. *Lambert* (1867) L.R. 3 Eq. 409.

Proof that the nuisance was caused by an attempt "peaceably to persuade other people" would afford no defence to such an action; though persons may be peaceably persuaded provided the method employed is not a nuisance.

In the expression at the beginning of *s.* 7 "with a view to compel" the word "view" does not import motive—it imports purpose.

Per Vaughan Williams, L.J., the words, "wrongfully and without legal authority" in *s.* 7 of the Act of 1875 mean unwarranted by law.

According to the true meaning of *s.* 7, all watching and besetting is unlawful, except such as is merely for the purpose of obtaining or communicating information; but the fact that a communication invites workmen to discontinue working as soon as they lawfully may, does not take such communication out of the proviso in *s.* 7.

By the Court: watching and besetting a person's house with a view to compel someone else is within *s.* 7, sub-*s.* 4, for the expression "such other" in the sub-section means "any other."

Section 7 of the Conspiracy and Protection of Property Act, 1875. discussed and explained.

The decision of the Court of Appeal in *J. Lyons & Sons* v. *Wilkins* (1896) 1 Ch. 811, approved and held to be in no way overruled by *Allen* v. *Flood* (1898) A.C., i., or by any principle laid down therein.

Appeal from decision of Byrne, J., holding the plaintiffs entitled to a perpetual injunction to restrain the defendants from watching or besetting either the plaintiffs' works or the works of a sub-manufacturer for them for any purpose except merely to obtain or communicate information, dismissed.

REPORT BY SIR GODFREY LUSHINGTON.

[References to the Official Reports of the Cases mentioned will be found in the Table prefixed to Appendix ii.]

THE TAFF VALE CASE.

With all that is said in the Report on this case I am in complete accord. I hold it of great importance that in the conduct of strikes workmen should recognise their duty to conform to the law, and feel themselves to be not only workmen pursuing their own interest but members of society at large, and, like everybody else, responsible for their actions.

But for the same reason I dissent from the proposal in the Report that the Provident Funds of Trade Unions should be exempt from liability. No reason is given for this but the encouragement of thrift. Thrift is a good object; but thrift comes after payment of just debts, and certainly not least, debts incurred in consequence of wrong-doing to others. The case is only made the stronger by the attempt altogether to repudiate debts of this character. That workmen should collectively do wrong, and be able to refuse to those who have suffered from such wrong any reparation out of the funds they have collectively saved for their own use and benefit, is contrary to justice. The proposed exception is quite anomalous. In the case of an individual debtor all insurance policies of which he is the beneficiary owner pass to his trustee in bankruptcy. The reservation, made *in misericordiam*, of a workman's tools and bedding, is an exception that marks the rule, and the value of such goods is trifling, whereas the Provident Funds of a Trade Union may amount to hundreds and thousands of pounds. So in the case of societies. Friendly societies are Provident societies; but the official rule in the case of a dividing society expressly provides that it shall be the duty of the Committee of Management to see that all claims upon the society existing at the time of any division of the funds thereof are met and provided for before any such division takes place. And the same principle would be followed in the event of a society being dissolved.

I may add that the practical difficulties in separating provident funds from other funds, or rather in securing that such separation has been made and observed, are very great indeed. Unregistered Trade Unions are not bound to keep any accounts. Registered Trade Unions are bound once a year to send in a return in a prescribed form. At no other time do the accounts come before the Registrar, and there is no provision for a public audit. The auditors are appointed as prescribed by the rules, and there is nothing to prevent members of the Union being chosen for the office.

The objection above stated applies still more strongly to Mr. Webb's suggestion that out-of-work funds should be also exempted. The term out-of-work-funds is an ambiguous one. On this point I may refer to the Trade Union Provident Funds Act, 56 & 57 Vic., c. 2, which in granting exemption from income tax to Trade Union Funds applicable and applied solely for the purpose of Provident Funds declared that the expression Provident Funds should include, *inter alia*, payments made to members out of work. The Bill was introduced into Parliament as a proposal to exempt Provident Funds pure and simple, and as such passed through both Houses without any amendment or discussion. But the accounts of many Trade Unions show no difference between payment to members who are out of work from slackness of trade and payments to members who are out of work because of a strike. And there is reason to believe that, although strike pay is not officially regarded as pay to members out of work, there is an unknown number of cases in which what are virtually Strike funds are exempt from income tax.

The Report further recommends a special enactment to protect a Trade Union from undue liability on account of the acts of its Branches as its agents; and one or more of the Commissioners suggest a special enactment of a wider scope to comprehend the most important of such principles of responsibility for the acts of agents as are applicable to Trade Unions. Both of these proposals appear to me open to grave objection. No doubt the law of Principal or Agent is from the nature of the subject necessarily complicated, and difficu'ties must be expected in applying it to Trade Unions, just as difficulties have been experienced in applying it to other societies and to individuals. But it is not suggested

that the general law is really inappropriate for Trade Unions, or that its application has been found to produce injustice. It would in my judgment be impracticable to embody the law in a few clauses, more especially as it is not proposed to place any restrictions upon the liberty which Trade Unions now possess of adopting any form of internal organisation or of relations between the Central Association and its Branches that they think fit. And, after all, the responsibility as Principal cannot in the case of a Trade Union be made to turn solely on the rules of the Society any more than in other cases it turns exclusively upon instructions given by the Principal to his Agent. The almost inevitable result of any such legislative attempt as is proposed would be to assign to Trade Unions some sort of peculiar rule of liability for the acts of their agents. This is much to be deprecated. A more stringent liability than is imposed on others as Principals would be a hardship to Trade Unions, whilst a laxer rule would be unjust to those who may suffer from the tortious acts of Trade Unions and would impair the salutary effect of the Taff Vale judgment.

Status of Trade Unions.

Attention, I think, should be called to the case of *Howden* v. *Yorkshire Miners Association* recently decided by the House of Lords, which opens up and throws light upon the whole Status of Trade Unions as fixed by the Trade Union Acts 1871, 1876.

Before 1871 the legal position was this. By general law any agreement, by whomever made, which in itself was in restraint of Trade, was unlawful in the sense of being unenforceable; and in the case of an Association, if, as a whole, its purposes were unlawful, the Association itself became an unlawful Association, with the consequence that *all* its agreements were unenforceable. This was the case with a Trade Union. Its purposes were unlawful as being in restraint of Trade: none, therefore, of its agreements could be enforced by either party to the same. The particular agreement in question might not itself offend against the rule as to restraint of trade, as for instance an agreement to hire business premises, but for the Courts to enforce it would be indirectly to further the unlawful purposes of the Union. For the same reason a Trade Union could take no civil action for the protection of its funds, nor claim the benefit of any power given for that purpose to lawful Associations. This was an acknowledged grievance as shown by the temporary Trade Union Funds Protection Act 1869. In 1871 Trade Unions sought to have this disqualification removed with the view that such of their agreements as were necessary for the carrying on of the business of a Trade Union and could be enforced without an investigation of the internal administration of the Union should be treated as valid by the Courts. If, however, the Bill were to be to the effect that Trade Unions and their affairs should be altogether exempted from the rule of restraint of Trade, then, as one consequence, all their agreements with their members would be enforceable either by members against the Union, or by the Union against the members. The first would be objectionable to Trade Unions, as it would expose them to litigation and interference by the Courts. The second would presumably be rejected by Parliament. Hence a middle course was adopted, and this found expression in the Trade Union Act 1871.

The intended objects of the proposed legislation were thus explained by the members of the Government in charge of the measure when it was introduced successively into the two Houses of Parliament.

Mr. Bruce :*

At present Trade Unions were wholly illegal; and, being so, every agreement, however innocent in itself, was tainted with illegality. The Bill did not propose to legalise what might be called primary contracts—such as agreements not to work or not to employ—and no person will be entitled for benefits to which he is entitled under a contract with a Trade Union. If such contracts were enforceable now, Courts of Equity might be called upon to enjoin masters against opening their works, or workers from going to work or discontinuing a strike; whilst our County Courts would have to make decrees for contributions to strikers, or to enforce penalties from workmen who had felt it their duty to resume employment.† It was not proposed to place Trade Unions therefore in all respects on the same footing as Friendly Societies. It was not the opinion of Mr. Harrison who so ably represented Trades Unions on the Commission that the law should be altered to that extent. [Then followed a quotation from the Minority Report.]

Lord Morley :‡

The Bill provided that all primary contracts made by Trade Unions should not be enforceable, but that the secondary contracts should be enforceable. The result of that would be that no legal proceedings could be instituted to enforce any agreement between the members as to the conditions on which they will work, nor compel the payment of subscriptions, nor for the application of the funds, nor to discharge fines imposed upon any person by Courts of Justice, but on the other hand the Secretary could sue the Society for his salary, or the Society their banker in respect of their fund deposited with him. None of the agreements he had

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* Hansard, vol. cciv., page 266, 14th February 1871.

† *See* remarks by *Crompton, J.* in *Hilton* v. *Eckersley* and *Jessel, M. R.* in *Rigby* v. *Connol.*

‡ 1871, May 1st, Hansard ccv., page 1918.

mentioned were constituted unlawful, but they were simply not enforceable by law. Indeed it was not the wish of the Trade Unions to be put completely in the position of Friendly Societies. Their objects, rights and liabilities were mostly as remarked by the minority of the Commission, such as Courts of Law should neither enforce, modify, or annul, but such as should rest on consent.

The sections of the Trade Union Act of 1871 bearing on this point are in the following terms :—

3. The purposes of any Trade Union shall not by reason merely that they are in restraint of Trade be unlawful so as to render void or voidable any agreement or trust.

4. Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely :—

1. Any agreements between members of a Trade Union as such concerning the conditions on which any members for the time being of such Trade Union shall or shall not sell their goods, transact business, employ or be employed.

2. Any agreement for the payment by any person of any subscription or penalty to a Trade Union.

3. Any agreement for the application of the funds of a Trade Union :—

(*a*) To provide benefits to members; or

(*b*) To furnish contributions to any employer or workman not a member of such Trade Union in consideration of such employer or workman acting in conformity with the rules or resolutions of such Trade Union; or

(*c*) To discharge any fine imposed upon any person by sentence of a Court of Justice ; or

4. Any agreement between one Trade Union and another ; or

5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

Both Section 3 and Section 4 applied to all Trade Unions whether registered or unregistered. Section 3 is qualified by Section 4. Section 3 clearly enabled the direct or indirect enforcement of any of the agreements above described as necessary for the carrying on of the business of a Trade Union, for presumably it would not be one of the agreements mentioned in Section 4. Section 4, it will be observed, does not in terms absolutely prohibit the enforcement of any of the agreements mentioned therein. With their indirect enforcement which by virtue of Section 3 was authorised it does not interfere at all. But its effect is to forbid Section 3 from being invoked for the purpose of directly enforcing any of the agreements mentioned in Section 4 ; and, in consequence, it has been decided that if asked to directly enforce any such agreement the Court has to deal with the case as if Section 3 had never been enacted, in other words, to deal with it according to the law as it stood before 1871 when Trade Unions by reason of their purposes being in restraint of Trade were unlawful associations.

The construction of Sections 3 and 4 taken together has been several times before the Courts : and the question considered what is the difference between direct and indirect enforcement. It has been decided that an application by a member that he should be declared entitled under the rules to personal benefits or to re-instatement* as member of the Trade Union, and that an application by the Central Executive for an injunction to restrain the branch executive from dividing Union Funds amongst the members of the branch contrary to rules† were applications for the direct enforcement of an agreement within Section 4, and could not be entertained by the Court. On the other hand it was held by Mr. Justice Fry‡ that an application by a member for an injunction to prevent an amalgamation of one Trade Union with another was not for a direct enforcement of an agreement within Section 4 and could be entertained .

Recently these Sections have been further interpreted by the House of Lords in the case of *Howden* v. *Yorkshire Miners' Association* The plaintiff, a member of the Association—a registered Trade Union—sued for an injunction to restrain the Central Executive from applying the funds to the maintenance of a strike instituted by two of the branches, on the ground that the strike had not been formally authorised by the Central Executive, as required by the rules. The Court of Appeal granted an injunction, and this decision was substantially affirmed by the House of Lords. Two of the Law Lords, however, Lord James of Hereford and Lord Davey dissented, being of opinion that an injunction against the breach of rules was equivalent to a direct enforcement of the rules. As to the meaning of the word "directly," Lord Davey expressed himself to the effect that where the primary object of the action was to enforce the agreement, and the right of the plaintiff to maintain the action was founded on his right to have the rules observed, the action should be deemed to be one for directly enforcing the agreement : but, where the construction and effect of the rules (if it came in at all) only came in as evidence to support the relief claimed, the action would not be one for directly enforcing the agreement. And as an illustration he supposed the case of trustees (not being members)

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* *Rigby* v. *Connol* per *Jessel, M.R.*

† *Duke* v. *Littleboy.*

‡ *Wolfe* v. *Matthews*, 31 Ch. D. 194.

suing to recover the property of which under the Act they were statutory owners and guardians, by means of an action in which the effect of the rules might be immaterial or material only as evidence. The other Law Lords gave a different interpretation to the word "directly." The Lord Chancellor in the course of his judgment observed :—

"This argument (of the defendants) seems to assume that the object of this enactment was to keep the Trade Unions out of the jurisdiction of the Court altogether. I do not think it does anything of the kind. . . . It seems to me that it would have been a very colourable concession to the Trade Unions if the legislature had left their funds, which under the arrangement made constituted a trust for a particular purpose, without any protection against those entrusted with the distribution of their funds. That the Court should not interfere with the distribution according to their own rules when such distribution was within the purposes of the trust is one thing, but that there should be no recourse to the Courts where it is threatened to divert them" [is another]. . . . "Surely the section cannot mean that, because the preservation of the property in trust is one that individually will benefit the beneficiaries, therefore it is a suit for enforcing one of the recited agreements which certainly in their terms are inapplicable."

And on the same point Lord Macnaghten observed :—

"I cannot think that the Legislature intended to strike at proceedings for directly enforcing certain agreements, leaving untouched and unaffected all proceedings (other than actions for damages) designed to enforce these particular agreements indirectly. To forbid direct action in language that suggests that the object of the action so forbidden may be obtained by a side wind seems to me somewhat of a novelty in legislation. I venture to think that the word 'directly' is only put in to give point to the antithesis between proceedings to enforce agreements directly, and proceedings to recover damages for breach of contract which tend, though indirectly, to give force and strength to the agreement for breach of which an action may be brought.

His Lordship then proceeded to say that, whatever the meaning attached to the expression "directly," the result for the present purpose must be the same, because, in his opinion, the object of the litigation was not to enforce an agreement for the application of the funds of the Union to provide benefits for members within Section IV., 3 (a).

"The object of the litigation was to obtain an authoritative decision that the action of the Union, which was challenged by the plaintiff, was not authorised by the rules of the Union. The decision might take the form of a declaration or the form of an injunction, or both combined. But the decision, whatever form it might take, would be the end of the litigation. No administration or application of the funds of the Union was sought or desired. The object of the litigation was simply to prevent misapplication of the funds of the Union, not to administer those funds or to apply them for the purpose of providing benefits to members."

And later on :

"The proceedings which the plaintiff has instituted do not, I think, involve the administration of the funds of the Yorkshire Miners' Association collected for benevolent purposes or the application of those funds to provide benefits for members. Nor was the litigation, as it seems to me, instituted with that object. It was simply an application to the Court to determine the true construction of certain rules which had been, as the plaintiff contended, misconstrued by the Executive of the Association. I need hardly point out how disastrous it might be to the funds of this Union, and to Trade Unions generally, if there were no means of preventing the managers and masters of the Unions from diverting the funds from their legitimate and unauthorised purpose."

The House of Lords expressed their approval of Wolfe *v.* Matthews, but did not overrule Rigby *v.* Connol or any of the other cases. In affirming the decision of the Court of Appeal they varied the Order. The Order as varied was more precise and at the same time contained no injunction : it was a simple declaration that the payment of strike pay to the financial members of the Yorkshire Miners' Association in pursuance of a resolution of the Council of the Association (which the Order particularised by its date and the date of its confirmation) was in contravention of the rules of the Association, and that the said resolution purporting to authorise such payment was *ultra vires* and illegal.

The House of Lords as a judicial Tribunal could take no cognisance of the declarations made in Parliament previous to the passing of the measure in 1871. Those declarations, it appears to me, point to the objects of Parliament in the legislation of 1871 as having been—if I may so describe them—that the general purposes of a Trade Union which were in restraint of trade should not be directly furthered by the enforcement of agreements themselves in restraint of trade, viz., the agreements mentioned in Sec. 4, and constituting the "primary" agreements described by Mr. Bruce and Lord Morley—but might be indirectly furthered by enforcement of agreements not in themselves in restraint of trade (as an agreement to take a lease of business premises)—the "secondary" agreements described by Lord Morley. If this be so, then it is clear, from the decision in Howden *v.* Yorkshire Miners' Association, that the actual terms of the Statute are not adapted to give effect to what in 1871 was the intention of Parliament, and authorise the Courts to exercise a wider control over Trade Unions than was at that time contemplated. In the present instance the intervention of the court stopped a great strike. The full scope, however, of the decision of the House of Lords can hardly be estimated until it has been ascertained how far it affects the law as laid down in Rigby *v.* Connol, and other like cases which have not been overruled.

For these reasons I have thought it right to call attention to this case, but I do not suggest any amendment of the Statute. The Trade Unions have not, so far as I am aware,

made any protest against the law as laid down by the House of Lords, and that law is, in my opinion, advantageous for the public and also for Trade Unions.

The Report recommends that Trade Unions should be declared by Statute to be legal associations. But how can a Trade Union be declared to be a legal association any more than a company can be declared a legal company? Each is presumably legal until it pursues purposes which as a whole are unlawful; then it ceases to be so. In my opinion, —at all events for all such Trade Unions as might become incorporated (in pursuance of a suggestion presently to be mentioned)—nothing more in this direction can be done by the Legislature than has been done by Sec. 3 of the Act of 1871, which enacts that the purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Then as to the recommendation that facultative powers be given to Trade Unions either (*a*) to become incorporated subject to proper conditions, or (*b*) to exclude the operation of Sec. 4 of the Trade Union Act, 1871, or of some one or more of its Subsections, so as to allow Trade Unions to enter into enforceable agreements with other persons and with their own members to secure such enforcement. From a general point of view I am not aware of any objection to the grant to Trade Unions of Incorporation "subject to proper conditions." Incorporation is an organisation which is slightly more convenient than that which registered Trade Unions now possess, and is of neutral significance, being granted by Statute indiscriminately to companies within the Companies Acts. Only in my judgment the proper conditions to be attached to Incorporation would be the conditions pertaining to registered Trade Unions. Of course if Incorporation were assumed, it would be assumed once for all, though it would be possible to devise conditions that might from time to time vary according to circumstances.

The somewhat indefinite proposal, however, of the Report for the grant either of Incorporation subject to proper conditions or of power to exclude Section 4 of the Act of 1871, or one or more of its Subsections, is made only for a particular purpose, viz., to enable enforceable contracts being entered into between a Trade Union of Workmen and a Trade Union of Employers for the regulation of terms of employment. Trade Unions have not asked for power to enter into such agreements and to all appearance are not likely to do so; I do not therefore think the prospect of such agreements is sufficient to justify any change, much less so serious a change in the status of Trade Unions as is involved in either of these alternatives, for the two in this respect are presumably the same. The same provisions of Section 4 of the Act of 1871 would have to be dispensed with, whether there was Incorporation or not. But to dispense with Section 4, or any of the more important of its Subsections, would really be to subvert the constitution which Trade Unions now have under the law. From an equitable point of view, it may be reasonable that a Trade Union if it is to be responsible in damages to employers for breach of agreement by its members shall in order to protect its funds have legal power to compel its members to continue their stipulated contributions and legal power to prevent them from working on terms contrary to the stipulations; and if so, then in turn it would be reasonable that members, being thus liable to have their obligations enforced against them, should have legal power to sue the Union for benefits to which they are entitled. The power to sue for benefits is one to which nobody probably would object except the Unions themselves. But I think Parliament would decline to allow the law to be used to prevent workmen from working or to compel workmen to maintain a Trade Union. I therefore altogether dissent from the Recommendation.

Picketing.

I dissent from the proposal in the Report to strike out from the list of offences made punishable by Section 7 of the Act of 1875 the watching and besetting of premises. This proposal, I understand, is made on the ground that the practice is (notwithstanding the words in the Section "with a view to compel") presumably for a legitimate purpose, that of reasonable persuasion, and that cases of abuse are sufficiently met with by other provisions of the law; if watching and besetting amount to intimidation, a criminal offence is committed under the Statute: if to a public nuisance, an indictment will lie: if to a private nuisance, the aggrieved person has a right of action and may apply for an injunction.

Experience, however, has shown that in cases of this description the remedy of an indictment at the next Quarter Sessions is illusory; still more so is an action at law against persons who do not possess the means to make reparation; nothing is really effective to put a stop to misconduct of this kind but criminal proceedings in a Court of Summary Jurisdiction. It was doubtless for this reason that Parliament in 1875, whilst by Section 3 excluding to a certain extent indictments for conspiracy, passed Section 7 making such acts of molestation as were likely to be committed in times of strike, offences summarily punishable with imprisonment. Amongst these was watching and besetting of premises—certainly not less an act of molestation than other of the acts mentioned in that Section. In my opinion, even supposing that the sole purpose was that of peaceable persuasion, watching and besetting of the premises ought not to be permissible. It is quite different from peaceable persuasion without watching or besetting, or from anything which workmen are at liberty to do in their own interest, though it may operate to the inconvenience of others: it is an act of direct interference and aggression, and ought to be forbidden as a trespass on the comfort of others. But to make the supposition that the object is only peaceable persuasion is to take a far too optimistic view of the matter; the reality is very different. As is stated in the Report, the evidence which the Commission has received is overwhelming to show that watching and besetting for the purpose of peacefully persuading is really a contradiction in terms. It always operates as compulsion and it cannot be doubted that because it is found to compel that Trade Unions systematically resort to it. To judge the matter aright, it is necessary to bear in mind the excited condition of feeling amongst workmen in times of strike. I am not referring to graver cases where acts of violence have been committed, or where the maintenance of order has become a serious difficulty to the police, or where it has been found necessary to provide special accommodation for workmen electing to work so as physically to separate them from those on strike, though all these are contingencies that may easily arise. I am referring to ordinary strikes, and as to these it is sufficient to recall the language of opprobrium in which the leaders of the strike in their public harangues habitually speak of those who have not joined the strike, in order to form a conception of the language which the rank and file sent out under the orders of these same leaders to act as pickets are likely to use in their dialogues with workmen who think fit to continue to work. When systematic picketing has been established a workman cannot enter or leave his place of work without being liable to be intercepted and interviewed by those who are watching and besetting the place for the purpose, and who, even if numbering only one or two, represent a large number of workmen on strike, smarting under what they consider to be a grievance, suffering from want of wages, and angry at seeing their places filled up by others. And this may go on for days or weeks together, or similar dialogues may be renewed day after day at the workmen's own door in the presence perhaps of his wife and family, or the same procedure may be applied to the workman's wife in the workman's absence. Even if the interview begins with persuasion, it is obvious, as the Report also states, how easy it must be to pass from the language of persuasion into that of abuse, and from words of abuse to threats and acts of violence. A considerable proportion of the cases of physical violence which occur during times of strike arise directly or indirectly out of picketing. In one way or another under the name of picketing compulsion and intimidation are extensively exercised, and are very difficult to detect. The truth is that picketing is a form of industrial conscription; and, in organising it, Trade Unions act as if they represented not only their own members but the entire body of workers, and had authority to enforce regulations to which all were bound to conform. It is a system which could not be habitually practiced by any society in which membership was purely optional, and which recognised that every individual was free to act as he pleased. In connection with this point it must be remembered that the Statute does not apply exclusively to workmen; at the instance of Trade Unions it was made of general application, and extends to the whole community. As a fact I believe the particular enactment is not required for anybody except workmen in time of strike. Picketing exists nowhere but in connection with Trade Unions. Is it possible, for instance, to imagine that a tradesman should picket the premises of a competitor? or that one Railway Company should picket the station of another Railway Company? or that the authorities of a church or chapel should watch and beset the approach to a rival church or chapel? or that picketing should be introduced into political warfare, and say the Conservative organisations should station pickets at the doors of the private residences of Liberal Members of Parliament, to watch them day after day coming in and going out, to communicate or to receive information or to peacefully persuade them? The very suggestion seems ludicrous; yet this is but a very faint picture indeed of what in times of strike individual workmen have actually to undergo at the hands of Trade Union pickets.

I am of opinion that picketing is an abuse for which a remedy is urgently required, and that the personal freedom of workmen needs not less protection than hitherto, but more. I, therefore, recommend that the existing prohibition of watching and besetting be retained, and that the proviso permitting it for the sole purpose of giving and receiving information be repealed.

I think Section 7 of the Act of 1875 should be amended so as to make it clear that the person against whom any of the forbidden acts of molestation are committed need not be the same person who is intended to be compelled. It has already been decided in Lyons *v.* Wilkins that this is the proper interpretation of the Statute; but the language of the Statute is far from clear. The offence of molesting a workman is, it is obvious, equally great whether it is with a view to compel the workman not to work or the employer not to employ; and the offence of molesting a wife is not lessened by the fact that the object is to compel the husband not to work

I agree with the proposal that an individual shall not be liable for doing any act not in itself an actionable tort only on the ground that it is an interference with another person's trade, business, or employment. This is a general and comprehensive provision, covering almost everything; but it will be advisable also to particularise.

I therefore agree also with the proposal to declare that a strike (including a sympathetic or secondary strike) from whatever motive or for whatever purpose, apart from crime or involving breach of contract, is not illegal.

Also with the proposal that to persuade to strike, *i.e.*, to desist from working, apart from breach of contract is not illegal. But I should wish the proposal to extend to persuading not to enter into a contract of employment.

I further recommend that the notification of a strike, whether given by the workmen themselves or by anyone else on their behalf, shall be declared not to be illegal. This appears to be a simple matter, but it has a long legal history of its own, reaching down to the present time. In Appendix I. I have given the principal particulars, as showing, more effectively than anything else can do, the necessity of the proposed enactment. The various proposals, however, contained in this and the three previous paragraphs as to acts of individuals are of little value, unless the law of Conspiracy is amended so as to permit of the same acts being done or instigated by persons in combination.

CONSPIRACY.

On the subject of conspiracy I concur with the recommendation of the Report. I also concur with the reason given in the Report for such recommendation, viz., that the considerations which led to restrictions being placed by the Statute of 1875 upon criminal proceedings for conspiracy in trade disputes justify the introduction at the present time of similar restrictions on civil proceedings. But in my opinion the logical argument in favour of establishing such conformity or of supplementing the exceptional provisions made in 1875 for the case of trade disputes, is insufficient to support what is in effect a recommendation to supersede the law laid down and approved by the House of Lords in their decision on Quinn *v.* Leathem—more especially as that argument may be met, I do not say overborne, by the counter argument that many acts are torts without being crimes, and that conspiracy to injure may be one of them. Believing as I do that substantial reasons exist for holding there to be a strong case for relief against the law as it now stands, I think these reasons require to be expressly stated. Nor is it enough to express these in general language, as to say that the law is vague and unintelligible and produces hardships in forbidding acts which should be permissible. To appreciate the case it is necessary to follow the operation of the law to its practical consequences, and this unfortunately cannot be done without reference to the technicalities of the complex and obscure law of conspiracy, and even to their history. I also think that there should be offered some reasoned assurance that the result of the suggested change in the law will not be to make permissible acts which ought to be forbidden.

First, then, with regard to criminal proceedings for conspiracy, and to the circumstances which led up to the Statute of 1875.

A complete statement of the law as it stood in 1873 may be found in the late Mr. Justice Wright's Treatise; for present purposes the following may perhaps suffice. The offence of criminal conspiracy as defined by the Ordinance of Conspirators of 1305 was limited to agreements between two or more persons to commit the particular act of false and

malicious indictment for treason or felony, and could only be prosecuted in the event of the person so falsely accused having been tried in consequence and acquitted. In course of time conspiracy came to extend to agreements to commit any crime (also such fraud as was not criminal), and by the end of last century it was recognised as including agreements to commit a civil wrong (R. v. Warburton, 1870, L.R., i. *C.C.* 274). Thus the agreement or combination, whether it was to commit an offence or to commit a tort, was a combination to commit some unlawful act, something forbidden by the law—the criminal or the civil law as the case might be. In accordance with this was the common description—it cannot be called a definition—of a criminal conspiracy, viz., a combination or agreement to do an unlawful act or to do a lawful act but by unlawful means. About the same time the crime of conspiracy (an indictable misdemeanour) was held to consist in the *agreement* to do the unlawful act; the agreement entered into, the crime was complete, whether the unlawful act was carried out or not. So far there is no dispute. But, the common description of conspiracy notwithstanding, were there not cases in which a combination to do acts such as when done by an individual were neither criminal nor tortious, was a criminal conspiracy? Was not a combination to do intentionally acts at once harmful and not unlawful—call the acts having this double characteristic injurious acts—known as a conspiracy to injure?* And if so, was the combination to do such acts a *prima facie* conspiracy, if they were done at all? If they were done with a bad motive? If they were done to a trader in the course of his trade? These are questions which will now be considered.

The difficulty whether combination to injure constituted a criminal conspiracy may be attributed in great measure to the opinions held by Judges on the question as to what circumstances (if any) would cause the like injurious acts to be unlawful when done by an individual apart from combination. Lord Esher, for instance, held that a lawful act, if done with malice, became unlawful (Bowen *v.* Hall, and other cases), Sir W. Erle that an injurious act of an individual, if done in restraint of the free course of trade, was actionable and even criminal. (*a*)

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* "Conspiracy to injure" may be taken as the generic term, comprehending a variety of species known in "Pleaders" language as conspiracy to oppress, conspiracy to coerce, conspiracy to impoverish, etc. But it must always be borne in mind that it does not mean to commit a legal injury or legal wrong, as the phrase might seem to import: it means to commit an act neither criminal nor tortious, but intentionally hurtful. This is the more necessary because in some instances, notably in FitzGerald J.'s charge to the Jury in R. *v.* Parnell, the term conspiracy to injure is applied to a conspiracy to commit a legal wrong.

(*a*) Extracts from the Memorandum by Sir W. Erle, appended to the Report of the Royal Commission on Trade Unions, of which he was chairman.

[The following extracts refer exclusively to the Free Course of Trade, the main subject of the Memorandum. But the views expressed were founded on his conception of the general scope of the Common Law and its growth. In one passage, p. lxxiv., Sir W. Erle observes, "There are also public interests of great importance in respect of which some combinations for the purpose of violating the public rights therein are crimes, although such violations by an individual alone may not be always indictable. Justice, morality, polity, and trade are examples of such public interest." In another, p. lxvi., after describing a crime to be such a violation of a private right or of a duty as affects the interest of the public, he adds, "It is known in practice to be classed as a crime, but the essence of criminality has not been defined at common law," and in another, p. lxxii., he says of Hilton *v.* Eckersley that a judgment for the plaintiff "might probably have been supported on the ground that the circumstances of society which gave occasion for some of the rules of the Common Law and many of the Statutes against combinations of working men were changed, the Common Law being in a state of perpetual growth: *cessante ratione cessat et lex.* The law is as the judges declare it to be."]

p. lxix. Every person has a right under the law, as between him and his fellow subjects, to full freedom in disposing of his own labour or his own capital according to his own will. It follows that every other person is subject to the co-relative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description, done not in the exercise of this right but *for the purpose of obstruction*, would, if damage should be caused thereby to the party obstructed, be a violation of this prohibition, and the violation of this prohibition by a single person is a wrong to be remedied either by action or by indictment, as the case may be. It is equally a wrong whether it be done by one or by many—subject to this observation, that the combination of many to do a wrong in a matter where the public has an interest, is a substantial offence of conspiracy. It is equally a wrong whether the obstruction be by means of an act unlawful in itself on the part of the party obstructing, or by means of an act not otherwise unlawful.

p. lxxi. Furthermore I think that there may also be unlawful restraint of Trade without coercion by unlawful means and without such obstruction or molestation as is last above-mentioned. I assume that the employer and employed have each a right to a free course for free trade in labour, as above described. The supply of labour to the employer is stopped if the working man chooses to stop, and assuming for the present that his act is lawful whenever he freely chooses so to do, still a party who induces him so to do may in so doing (as it seems to me) infringe the right of the employer to a free course for the supply of labour. I take the case of money paid to the working man to induce him to stop, in which the motive for so paying is malice towards the employer—that is some corrupt or spiteful motive. I put aside money so paid from a motive of supposed interest, as in the case of some strikes, and assume it to be paid for the sole purpose of ruining the employer or destroying his manufacture. A question is thus raised: Does the law allow it? I think

It is not to be supposed that views like these as to what was unlawful for individuals were accepted universally. Lord Esher's view of the effect of motive was inconsistent with Stevenson *v.* Newnham, decided in 1853. And that the right attributed by Sir W. Erle to a trader to protection from interference in the free course of trade—a right, it may be pointed out, described not as absolute but as qualified by equal rights attributed to others—was not at the time completely recognised, may be inferred from the variations of opinion on the subject amongst the judges in the case of Allen *v.* Flood (in 1897), where some regarded it as the privilege of capitalist traders or employers, others as the privilege of all traders whether capitalists or workmen, but of nobody else; others as the common right of everybody to pursue his calling or to do what he was at liberty to do: others again denying that there was such a right at all beyond the right to protection from interference from anything which by the general law, whether civil or criminal, was forbidden. But, as admitted by Sir W. Erle in the extract already given from p. lxxiii. of his Memorandum of 1869, the question of the violation by an individual of the trader's right to a free course of Trade had not been made the subject of proceedings in the courts.*

To judges who held such opinions a combination to injure, if it was to injure a trader, or if it was to do harm with a bad motive, must have appeared to be a combination to do what was unlawful and therefore to fall into the ordinary description of a criminal conspiracy, *viz.*, a combination to do an unlawful act or do a lawful act by unlawful means. To other judges a combination to injure under the same circumstances would be a combination to do something which if done by an individual was not unlawful. This divergence of opinion may help to explain apparent inconsistencies of language found in the judgments, the acts done being described sometimes as wrongful, sometimes as not wrongful. Also some judges use the word wrongful of acts although in their opinion they are not actionable.

Whether the so-called conspiracy to injure was the outcome of the doctrine formerly entertained that acts of interference with a trader or malicious acts were torts when done by an individual: or whether it is the relic of the jurisdiction, once exercised by the Star Chamber and in some measure inherited by their immediate successors the Court of Queens Bench, to repress and punish whatever acts, whether done by individuals or in combination, might seem to them contrary to public policy; or whether it was created from the consideration which in modern times is put forward as its justification, that there are some things which though permissible to individuals should be forbidden to combinations, it is now impossible to say. What is certain is that the view of a combination to injure with a bad motive, or a combination to injure a trader, being a criminal conspiracy, was from time to time assumed to be the law by judges on the bench, and that in some instances, very few however in number, the same view was enforced by them.

Thus in Gregory *v.* Duke of Brunswick, 1843, the Queen's Bench, including Tindal C.J. held that whilst it was lawful for an individual to hiss at a theatre, a combination to injure an actor professionally by hissing him off the stage was a criminal conspiracy for which, if special damage was proved, an action would lie. In R. *v.* Rowlands, 1851, where strikers were indicted for conspiracy to injure an employer, the judge, Sir W. Erle, directed the jury that, if it was proved that the strikers had offered money to induce workmen to quit the employer's service and the jury thought this had been done with the motive of forcing the employer to accept a tariff of wages, they were

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not. A stop in the supply of labour is obviously a damage in every trade; the causing of the stop is a restraint of trade, and all restraint of trade is, as above stated, presumed to be unlawful, until the contrary is shown. Such a stop may be lawful, as for instance when the money is paid by a competitor offering higher wages to obtain workmen; but in the case supposed the money is paid not to work for a particular party, for the sole purpose of causing damage to that party whose supply is thus stopped. If the party paying for such a stop attempts to rebut the presumption of unlawfulness by alleging an honest purpose, the question of motive is the issue, and if the motive is found to be malicious, it seems to me to accord with principle that he should be found guilty of a wrong and made liable to damages. If two or more combined for the purpose of so causing damage, the combination would be, I believe, a crime.

p. lxxiii. The remedies under the common law for obstruction to the free course of trade are either by action for private wrongs or by prosecution for criminal offences. I do not find any reported cases, showing that resort has been had to proceedings for the civil injury, which would throw light on the present inquiry; and as to criminal offences, since the crime is almost always committed by a combination, the remedy by indictment for conspiracy has been most usual, as in practice it has been found most convenient. Still if there be any such private right to freedom for the course of trade as is above described, it follows that an action lies for the violation of that right; and if there be a duty towards the public to keep the course of free trade free from obstruction, indictment would lie for breach of that duty.

* The cases supposed to be of this kind were reviewed in Allen *v.* Flood and were shown to be cases of interference by acts which according to the general law were unlawful, irrespective of the motive with which they were done.

to find a verdict of guilty. In R. *v.* Druitt, 1867, a Trade Union case, Lord Bramwell, laid it down that, if a set of men agreed among themselves to coerce the liberty of mind or thoughts of another by compulsion or restraint, they would, by the Common Law, be guilty of a criminal offence, viz., that of conspiring against the liberty of mind and will of those towards whom they so conducted themselves. He was referring, he said, to coercion or compulsion, something that was unpleasant and annoying to the mind operated upon. In R. *v.* Bunn, 1872, the gas stokers' case, Lord Esher explained to the jury that the charge against the defendants of conspiracy was that of a combination to press the company to conduct their business contrary to their own will by an improper threat and improper molestation; and that at common law there is improper molestation if there is anything done with an improper intent which the jury might think an annoyance or unjustifiable interference, and which in their judgment would have the effect of annoying or interfering with the minds of the persons carrying on such a business as the gas company was carrying on; and he directed the jury that, if they thought the prisoners had done what they did with the evil intent of forcing their masters to carry on their business in a way which they knew was contrary to the will of their masters, they would say the prisoners were guilty of conspiracy.

These cases, however, cannot be said to be conclusive of what at that time was held to be the law. In R. *v.* Rowlands, when the case came before the Queen's Bench on the question whether the judge had misdirected the jury, the court was inclined to say the charges laid were too vague and, without expressing any opinion on their validity, they intimated that they thought there was sufficient doubt to grant a rule *nisi* in arrest of judgment; but at the suggestion of the Court the Counsel for the Crown assented to a *nolle prosequi* in respect of the three Counts. As to R. *v.* Druitt, 10 Cox, 592, the opinion expressed by Lord Bramwell has been adversely commented upon by Coleridge C.J.† but approved by the present Lord Chancellor and others.‡ The ruling in R. *v.* Bunn led to the appointment of a Royal Commission presided over by Cockburn C.J., and including Mr. Russell Gurney, then Recorder of London, and the effect of their report, which dealt only with criminal proceedings, was that in their opinion conspiracy comprised combination to commit a crime and combination to commit a tort, but not a combination to commit what was neither one nor the other; at all events they recommended that as to labour disputes this should be made clear by statute; and it was upon this Report that the Government introduced the Bill which became the Act of 1875 hereinafter mentioned. Three years later, in 1878, another Royal Commission, consisting of Lord Blackburn, Mr. Justice Barry, Mr. Justice Lush and Sir Fitz James Stephen, appointed to consider a Draft Code of Indictable Offences, presented in their Report a code with a view to its being brought before Parliament for enactment. This code contained a list of conspiracies, but amongst them was not a conspiracy to injure, the Commissioners expressing the opinion that there was not perhaps any distinct authority for the proposition that there are at common law any criminal conspiracies other than those that were contained in the code they recommended.

It is also to be observed that the labour cases mentioned above induced Parliament to legislate for the purpose of preventing their repetition. Thus the ruling in R. *v.* Rowlands led in the first instance § to the Act of 1869 which, amending the Act of 1825, declared that (in the cases in which combination was permitted by Statute), no person should by reason merely of his endeavouring peaceably and in a reasonable manner and without threats or intimidation, direct or indirect, to persuade, etc., be deemed guilty of molestation or obstruction within the Act of 1825, *or should therefor be subject to any prosecution or indictment for Conspiracy.* Later on, the same judgment—in conjunction with that in R. *v.* Druitt—led to the Criminal Law Amendment Act 1871. This Act, after repealing the Act of 1825, by which threats, intimidation, molestation, and obstruction had been made punishable without being defined, substituted an enactment defining acts of this character which, if done with the object of coercing, were to be punishable, and qualified it by the following important proviso:—

> Provided that no person shall be liable for doing or *conspiring to do* any act on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in the section and is done with the object of coercing as hereinbefore is mentioned.

Finally, when that proviso proved insufficient to prevent in R. *v.* Bunn a ruling

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† Curran *v.* Treleaven.
‡ 1891. Mogul case, p. 38.
§ Sir W. Erle's Memorandum, p. lxxxv.

similar to that in R. *v.* Rowlands, the Act of 1871 was superseded by that of 1875 which, withdrawing the matter altogether from the Courts, provided :—

An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a Trade Dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

A crime for the purposes of this Section means an offence punishable on indictment, or an offence which is punishable on summary conviction and for the commission of which the offender is liable, under the Statute making the offence punishable, to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

This enactment, still in force, did not, it will be noted, declare what was the law of conspiracy or alter the law, and applied only to criminal proceedings for conspiracy in Trade Disputes. So limited, however, whilst leaving untouched criminal proceedings for conspiracy to commit a crime punishable with imprisonment, it put an end to criminal proceedings for conspiracy to commit an offence not so punishable, for conspiracy to commit a tort, and (assuming there were such a conspiracy) for conspiracy to injure.

With this, so far as concerns Trade Disputes, the chapter of criminal proceedings for conspiracy was closed, or rather was thought to have been closed. From the judgment in Quinn *v.* Leathem it appears likely that questions will be raised as to the meaning of "any act in contemplation or furtherance of a Trade Dispute between employers and workmen."

The scope of criminal conspiracy will now be further considered mainly under the head of civil actions for conspiracy.

A civil action for conspiracy is an action for damages suffered from a criminal conspiracy, whatever that may be. Proof of special damage having been caused is, however, a necessary condition. Civil proceedings—in this respect unlike criminal proceedings—cannot be instituted for a criminal conspiracy if the conspiracy has rested in agreement and nothing has been done upon it. The question as to civil liability for a conspiracy to injure causing damage is in the case of a Trade Dispute complicated by the Act of 1875 having forbidden criminal proceedings in that case; but beyond saying that the term conspiracy has no legal meaning except as an indictable conspiracy, and that until Quinn *v.* Leathem there is no instance on record of an action for conspiracy which might not have been indictable as a criminal conspiracy, I will consider the matter only from a general point of view irrespective of the Statute of 1875.

For this purpose it is necessary to refer to the history of the peculiar practice of civil proceedings for Conspiracy. Originally there was a Writ of Conspiracy applicable to civil proceedings for damages occasioned by a criminal conspiracy as defined by the Ordinance of Conspirators of 1305 (false accusation of treason or felony). Under this Writ it was necessary for the plaintiffs to prove that there had been a combination and that the combination to do the act charged was a criminal conspiracy within the Ordinance, but it was not necessary to prove that apart from conspiracy this act, when done by an individual, was unlawful. The Writ, however, was required in its terms to follow closely the description and conditions of the offence, and unless all the conditions were strictly fulfilled was unavailable. Hence, to prevent the defeat of justice, a remedy was provided by a Writ of Trespass on the case in the nature of conspiracy, so called because the Writ was founded on the circumstances of the case, analogous to but not exactly identical with those to which the ancient Writ was appropriated. Such a Writ was popularly also called a Writ of Conspiracy and generally did expressly charge conspiracy, often indeed where there was only one defendant. But such action on the case was in truth not an action for conspiracy but a simple action of tort: the plaintiff had not to prove conspiracy, but had to prove that apart from conspiracy the defendant or defendants had done something unlawful which had caused damage to the plaintiff. There were thus two proceedings for conspiracy so called* and it is to be inferred that a combination to do acts which, for an individual, were not unlawful, could not, at all events, have been the subject of an action on the case. As criminal conspiracy became enlarged in its scope and generalised so as to include combinations to commit any crime, civil proceedings for the same kept pace; and henceforward for either purpose, civil or criminal, conspiracy (whether or not it involves proof of malice—a question afterwards to be considered) has altogether lost its association with the particular and specially odious offence of conspiracy as defined by the ancient

* Skinner *v.* Gunton, i. Williams, Saunders, p. 229. Saville *v.* Roberts, 1698, Lord Raymond, 374: "Where two cause a man to be indicted, if it be false and malicious, he shall have Conspiracy, where one, he shall have Case."

Ordinance (which could only be committed *falsе et malitiose**), and, though still an evil-sounding name, now means nothing more than preconcert † or combination. In course of time the practice was modified; and to judge from Gregory *v.* Duke of Brunswick the usage had by that time, 1843, come to be that the two modes of proceeding above-mentioned were in some way combined as alternatives under the same pleadings, the appeal of the plaintiff in that case being on the ground that the judge had treated the action exclusively as one of conspiracy and had accordingly directed the jury that they could not find a verdict against one only, whereas if the plaintiff had thought fit to prove, if he could, that hissing maliciously was by law a tort for an individual, the case might have been treated as an action on the case for a simple tort, in which event the verdict might have been against one.

At a still later date it would appear that the "proper" action for conspiracy had fallen altogether into abeyance, the action on the case alone remaining. So at least it may be inferred from the observations of the Judges in Salaman *v.* Warner, an action tried in 1891 for conspiracy in alleged misfeasance in floating a company.

Mr. Justice Day.—I at once, speaking for myself, disavow the term conspiracy in having any legal efficacy on the civil side of our courts. The term conspiracy is a well-understood term on the Crown side, but there is no remedy that I am aware of obtainable on the civil side in respect of conspirators other than that which you can obtain against each individual member of the conspiracy. It must be shown here, not that there is a conspiracy or a combination, but it must be shown by the plaintiff that the defendants—whether one of them or two of them or more than two of them, whether in combination or not, is utterly immaterial—have infringed some legal right which he had.

Lord Esher.—It is not true to say that a civil action could be brought for a conspiracy. If persons conspired to do an illegal thing or to do a legal thing in an illegal way, they are liable to an indictment and not to an action. They are only liable to an action if they conspired to do something against the rights of the plaintiffs, and have effected their purpose and committed a breach of those rights. The plaintiff therefore must show that the conspiracy was to injure those rights and that those rights had been injured. He has in fact to carry his case as far as if there had been no conspiracy at all. The fact of there having been a conspiracy did not increase his right of action in the least, though it did not diminish it.

Fry, J.—I propose to say nothing upon the question as to whether an action will lie for injury resulting to the plaintiff from an act done by several persons, assuming that that act could have been lawful if done by one but is unlawful if done by several as the result of a combination between them.

The importance of these observations to the present discussion is that Mr. Justice Day and Lord Esher, by absolutely denying the necessity, in any case, of proof of conspiracy, evidently did not recognise that a combination to injure (in the sense of a combination to do something which for an individual is not unlawful) was a criminal conspiracy, for otherwise there would have been a criminal conspiracy for which persons injured thereby could obtain no civil redress.‡

In R. *v.* Parnell—a case of political boycotting tried in 1881,—Mr. Justice (afterwards Lord Justice) FitzGerald expounded the law of Conspiracy to the Jury. He repeated to them the usual definition of Conspiracy, and under the third of the divisions into which he divided his subject he placed Conspiracy where two men agree to do an injury to a third party as a class though that injury if done by one alone of his own motion could not be in him a crime or an offence, but could be simply an injury carrying with it a right to a civil remedy. And he states the reason. When done by one alone it is but a civil injury, but it assumes a punishable or aggravated character when it is to be effected by the power of combination; and it is justly so because, though you may assert your rights against one individual how can you defend your rights against a number of persons combined to inflict a wrong upon you? At the same time he referred to R. *v.* Druitt as not inaptly illustrating this class of Conspiracy, but that was the case of a combination to do what for an individual was not unlawful. He also quoted from Archbold's Criminal Law the proposition that a Conspiracy is an agreement of two or more wrongfully to injure a third person or injure any body of persons. In specifying the different kinds of Conspiracy Fitzgerald J. did not name a Conspiracy to do that which is intentionally hurtful, but not unlawful.

To proceed now to the series of civil cases in which the question whether a combination to do what is not unlawful for an individual can be a criminal conspiracy has been directly raised. The question was for the first time thoroughly discussed in Kearney *v.* Lloyd, an action of conspiracy tried in the Irish courts in 1891, during the interval between the decision of the Court of Appeal and that of the House of Lords in the Mogul case—at a time, therefore, when the judgment of the Lord Chancellor and Lord Esher in Bowen *v.*

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* The real modern representative of the ancient action for conspiracy is the action for malicious prosecution, whilst actions for slander of title remain as instances of survivals of ancient actions on the case like those in the nature of conspiracy (Ratcliffe *v.* Evans, 1892, 2 Q.B. 52A). In both these cases it is to be noted the plaintiff has to prove malice. (See Stephen on malicious prosecution.)

† "Conspire is nothing; agreement is the thing." Per Lord Campbell in R. *v.* Hamp, 1852, 6 Cox 167; also Kearney *v.* Lloyd.

‡ Lord Esher, it is known from his judgments in Bowen *v.* Hall and other cases, held the opinion that for an individual to do a lawful act with malice was to commit a tort.

Hall, that malice made unlawful an act otherwise lawful, was still in force. The action was by an incumbent against his parishioners for conspiring to injure him by refusing to subscribe to a sustentation fund. The case having been argued and the Jury having answered the questions put them, the Judge (Andrews J.) abstained from giving judgment on the cause of action for conspiracy, and left the parties to move for such judgment as they might be advised. Defendants obtained a conditional order to enter judgment for themselves, the plaintiff showed cause, and the legal point was argued before Palles, C.B. In an elaborate judgment he came to the unhesitating conclusion that there could be no criminal conspiracy, and therefore no action for criminal conspiracy, unless the act agreed to be done amounted to a civil wrong when done by individuals—in other words, that there was no such misdemeanour as a conspiracy to injure. He reserved, however, the question whether this doctrine was applicable to cases of combination in restraint of trade.

Then came the Mogul case, an action of conspiracy against merchants who by underselling and exclusive dealing had combined to drive a competitor out of the market, which was adjudicated by the House of Lords in 1892. It might at first sight seem that it must have involved the question whether a combination to injure by acts not amounting to legal wrongs might be a conspiracy, but it did not, I think, conclusively determine it in either way; in fact it has been appealed to from both sides. According to Lord Bowen's judgment in the Court of Appeal—which was generally praised in the House of Lords, and which, it is to be remembered, was delivered when Bowen *v.* Hall was still an authority binding on the Court—the answer would appear to be in the negative. For he, quoting the ordinary definition of Conspiracy, viz., a combination to do an unlawful act or a lawful act by unlawful means, held that what was forbidden by the law was the same for individuals and for combinations, viz., to do an intentional act of harm without just cause or excuse, and the same view was taken by the House of Lords so far, at least, as the case of competition between traders was concerned. But the Law Lords did not all consider the case from one point of view. Some treated it as if the conspiracy charged was a combination to commit a tort and asked where was the tort or the right violated. Others, including Lords Bramwell, Field and Hannen, as if the conspiracy charged was a combination to injure, assumed that such might be a conspiracy, but insisted on the absence in the case before them of malice, which seemed to be a necessary ingredient in a conspiracy of that sort. But they all unanimously agreed that what the defendants had done was without bad motive and was justified by competition. The case, at all events, is an authority that if the law recognises a conspiracy to injure, it also recognises competition as a just cause or excuse.

The Scottish Fleshers case, which closely followed, may be considered to have been similarly decided.

Temperton *v.* Russell was a trade union case tried in 1893 in the interval between the Mogul case and Allen *v.* Flood—at a time, therefore, when Lord Esher's judgment in Bowen *v.* Hall had not yet been overruled. The action was for combining to injure by preventing contracts from being entered into, and proof was given that the defendants had not acted from any personal malice. The Court of Appeal, presided over by Lord Esher, on the authority of Gregory *v.* Duke of Brunswick, but without much discussion, and without any reference to Kearney *v.* Lloyd or to the Statute of 1875, held that there had been combination with a bad motive to prevent contracts being entered into, and that this was a criminal conspiracy for which, if it caused damage, an action would lie. This is the earliest instance on record of a civil action for conspiracy to injure being successful. It is an authority that the law recognises a combination to injure but requires a motive of some bad kind to be proved.

Allen *v.* Flood decided in 1897 was originally an action of conspiracy brought against Allen, a delegate, and officers of a Trade Union, but as finally adjudicated was an action of tort against Allen as sole defendant. The facts are given in the Appendix II., page 102. The Jury found a verdict that Allen had maliciously induced the Glengall Company not to engage the plaintiffs, and they did this after having been warned by the Judge that to find such a verdict it was necessary for them to be satisfied that the defendant had acted with a malicious intention, that is, not for the purpose of forwarding that which he believed to be his interest as a delegate of the Union in the fair consideration of that interest, but for the purpose of injuring the plaintiffs and preventing them from doing what each of them was entitled to do. Mr. Justice Kennedy gave judgment against Allen and the Court of Appeal affirmed his decision. The case went up to House of Lords before whom it was most elaborately argued, and the Judges were called in for their opinion. The majority of the Judges (amongst whom was Lord Brampton then Mr. Justice Hawkins)

and three of the Law Lords (including the Lord Chancellor) considered that the decision of the Court of Appeal should be upheld, being of opinion that the acts of the defendant constituted intimidation, coercion, and a malicious infringement of the rights of the plaintiffs and their employers to carry on their business as they thought fit. Amongst other authorities they quoted the passage from p. lxix. of Sir W. Erle's Memorandum (*supra* p. 78). But the majority of the Law Lords reversed the decision of the Court of Appeal; they held that there had been no intimidation and no coercion, that no right had been infringed, and in short that no cause of action had been shown. With respect to acts of individuals with which alone the case was concerned, they laid down two propositions apparently of general application: (1) That malice (bad motive of some sort) cannot make unlawful any act—including therefore any intentional act of harm—which is otherwise lawful. In this they reaffirmed the law as declared in 1853 in the case of Stevenson *v*. Newnham and over-ruled the judgments of Selborne, L.C. and Lord Esher in Bowen *v*. Hall. (2) That traders have no privileged right to protection for their trade; they have only the right which everybody posesses in respect of what he is at liberty to do, viz., the right to legal protection from interference by unlawful acts. This was understood to negative the doctrine that had been put forward by Sir W. Erle.*

The effect of these pronouncements upon the law of conspiracy to injure was not considered by the House of Lords, and was by some of the Law Lords, including Lord Herschell and Lord Macnaghten, expressly reserved. But one consequence is obvious, viz., if a combination to injure was a criminal conspiracy, it was—even if done with a bad motive, or done to a trader's business—a conspiracy to do what in the case of individuals was neither an offence nor a tort. The question remained whether such a combination was a criminal conspiracy.

Boots *v*. Grundy, heard in 1900 (after Leathem *v*. Craig had been decided in the Irish courts), was an action against Traders for combining to injure their rivals by inducing wholesale traders not to deal with their purveyors. The court, on the strength of the Mogul case and Kearney *v*. Lloyd, negatived the doctrine that combination to injure was a criminal conspiracy, but Mr. Justice Phillimore, who dissented from the decision of the court, carefully reviewed the principal cases relating to conspiracy to injure, and came to a conclusion which differed from that of Kearney *v*. Lloyd, and was to the effect that whilst, according to Allen *v* Flood, malice was immaterial in the case of acts of individuals, it might make all the difference in cases of conspiracy. In the course of his judgment he observed that the language of the judges who charged the jury in R. *v*. Parnell, 14 Cox C.C. 508, was with regard to their third division of the crime of conspiracy, hesitating and varying and that even the same might be said of the judgment of Bowen, L. J., in the Mogul case. Sometimes the learned judges spoke in the most general language of any combination to do any form of injury and sometimes they seemed to speak of combinations to commit actionable wrongs. But the observations of Lords Bramwell, Hannen and Field when deciding the Mogul case in the House of Lords and the reservation of Lords Herschell and Macnaghten when giving their decision in Allen *v*. Flood led him to conclude that they recognised the wider view of conspiracy taken in the older cases.

Lastly, Quinn *v*. Leathem decided in 1901 was an action for tort and conspiracy brought against Trade Unionists for their conduct on Strike. The circumstances are set out in p. 107 of Appendix II. The Jury after a warning from the Judge similar to that in Allen *v*. Flood, had found a similar verdict, *viz.*, That the defendants had maliciously induced the customers and servants of the Plaintiff to refuse to deal with the Plaintiff and had maliciously conspired to induce the Plaintiff's customers and servants not to deal with the Plaintiff or continue in his service. The legal questions raised were whether the propositions laid down in Allen *v*. Flood prevented the conduct of the defendants from being considered a tort or a conspiracy to commit a tort, and if not whether the law recognised a conspiracy to injure, *viz.*, a conspiracy to do something intentionally hurtful but not unlawful.

In dealing with the case before them the Lord Chancellor, Lord Brampton, and the other Law Lords, distinguished Allen *v*. Flood not only as relating exclusively to acts of individuals but because of the difference of the facts or rather of "the hypothesis of the facts" on which the adjudication of that case had been made: and the Lord Chancellor propounded reasons of a general character why the judgment in Allen *v*. Flood should be interpreted with strict reference to that hypothesis and ought not to be pushed to what might seem its logical consequences in other cases. In result, Allen *v*. Flood was recognised as establishing the general proposition that in case of acts done by individuals motive could not make unlawful what was otherwise lawful, but the same proposition was not extended to combinations. On the other hand the decision in Allen *v*. Flood having been that under the

* O'Brien J. in Leathem *v*. Craig, 1898, Irish Rep. Q.B. 688.

circumstances of the case no right of the Plaintiffs had been infringed, effect was not given in Quinn *v.* Leathem to the second proposition put forward in Allen *v.* Flood, *viz.*, that a person in respect of what he is at liberty to do is not entitled to legal protection from interference save so far as the interference consists in unlawful acts. Some of the Law-lords, in particular Lord Brampton and Lord Lindley insisted that the liberty of action possessed by every man to follow his calling as he thinks fit constitutes a legal right which would be infringed by any interference which was unjustifiable though not in itself unlawful, and Lord Brampton quoted again, what he had quoted before in Allen *v.* Flood, the Extract from page lxix. of Sir W. Erle's Memorandum (*supra*, p. 78) as to the trader's right, adding that he was not aware that the rights so stated had ever been seriously questioned. Some of the Law-lords also held that the threats of a Strike which had been used were intimidation. But their Lordships were unanimous that there was a Conspiracy; this Conspiracy however was according to some of the Law-lords a Conspiracy to commit a tort, according to others a Conspiracy to injure. The subject of Conspiracy to injure is glanced at by Lord Brampton, but is discussed by Lord Macnaghten alone and by him with extreme brevity: he does not define the Conspiracy, but merely states that such a Conspiracy is known to the law, and, as authorities for this statement, he names the cases noticed above in this Memorandum, *viz.*, Gregory *v.* Duke of Brunswick: R. *v.* Rowlands: R. *v.* Parnell: the Mogul case: and Temperton *v.* Russell: also the judgments in Leathem *v.* Craig of Andrews J. and Holmes L. J. The House of Lords upheld the decision in Temperton *v.* Russell.

At the same time, with reference to the Act of 1875 they held that Sec. 3, in forbidding criminal proceedings for such a conspiracy in trade disputes, left civil liability untouched. In consequence, workmen and others in trade disputes may be made civilly liable for a conspiracy to injure, although in their case such a conspiracy is not indictable as a criminal conspiracy.

It is not necessary to follow the cases which have since taken place. The co-existence of these two judgments, Allen *v.* Flood and Quinn *v.* Leathem, both of supreme authority, as proceeding from the House of Lords, and both, therefore, in theory at least, unalterable, save by the act of the Legislature, has created a legal situation which is bound to produce contradiction and uncertainty.

Starting now from the declaration in Quinn *v.* Leathem that a conspiracy to injure is known to the law, I will endeavour to show that an action for such conspiracy presents peculiar anomalies, and in case of trade disputes produces special hardships.

Common Law offences have no exact definition; it therefore avails little to lay stress upon the fact that Conspiracy to injure lies quite outside the bounds ascribed to Conspiracy by Mr. Justice Willes in 1868. when summoned with other Judges to expound the law to the House of Lords in the important case of Mulcahy *v.* Reg, 18 L.R. 3 H.L. 317.

> "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means.

After all, the great solecism of a Conspiracy to injure—a criminal offence involving civil liability for any damages that may ensue—is that it is a combination to do acts that are not unlawful. This solecism is aggravated by reason of the legal acts forbidden to combinations being unspecified; they are not of course specified in any Statute, but neither are they clearly indicated by the description usually given to them of acts of intentional harm done in combination.

Seeing that Conspiracy means no more than agreement carrying with it no sinister significance, seeing also that it is impossible that an agreement to do any thing of any kind can constitute a criminal Conspiracy, it is plain that the criminality of a Conspiracy—in the case where the aggravation from numbers is the leading consideration, no less than in other cases—must be derived from the acts agreed to be done possessing that character—whatever it may be—which the law requires them to possess in order that the agreement to do them may be a criminal Conspiracy (such criminality to begin so soon as the agreement has been entered into). This is obviously the case with a Conspiracy to commit a crime, and with a Conspiracy to commit a tort, but it is equally so with the so-called Conspiracy to injure. It is, however, difficult to see how in this connection the description "acts of intentional harm" marks off a specific class of acts. For the acts must be harmful, else there could be no claim for damages, and the harm must be intentional, for there can be no such thing as an agreement to do harm accidentally. The description then is no limit at all.

But there must be some limit. It may be suggested that "without just cause or excuse" is a limit, Conspiracy to injure being described as a combination to do without just cause or excuse intentional acts of harm which for individuals are not unlawful. But

this cannot be so. The theory of a civil action is for the plaintiff to allege that the defendant has done to him what is recognised by the law to be a *prima facie* tort or wrong: it is then for the defendant to deny that it is by law a *prima facie* tort, or, admitting it, to submit some specific circumstance on which he relies as constituting by law a just cause or excuse; and the plaintiff cannot succeed unless he has disposed of what has thus been submitted by the defendant, that is he must show either that the alleged circumstance is not recognised by the law to be a just cause or excuse or that, as a matter of fact, it does not exist. There is no *prima facie* tort known to the law which is not theoretically liable to be met by proof of some just cause or other; and from this point of view any tort whatever might be, though as a fact none is,* described as being without just cause or excuse, in the sense that if the case is defended the plaintiff has to refute what is offered as just cause or excuse, or if the case is undefended it is to be assumed that there is no just cause or excuse. It is thus plain that in a description of conspiracy to injure the words "without just cause or excuse" do not form part of the *prima facie* tort. Just cause or excuse is for the defendant to offer, if he thinks fit, and only so is the plaintiff under an obligation to show that there is none. This distinction is important as fixing what is the *prima facie* tort of a conspiracy to injure—that which the plaintiff has in the first instance to show, and on which he is entitled to have a verdict if the defendants put in no defence. The *prima facie* tort of a conspiracy to injure, then, is not that the defendants conspired to do acts of intentional harm *unjustifiably*, but simply that they conspired to do acts of intentional harm.† Now if it be borne in mind that the act may be of any kind so long as it is one of intentional harm; that the word harm means harm of any kind;‡ that intention to do harm does not imply on the part of the doer any malice in the sense of ill-will or bad motive of any kind: that the word conspiracy is a neutral word merely meaning pre-concert, and that two are enough to form a conspiracy, it will be seen how indefinite and sweeping is a conspiracy to injure. And it is a criminal offence, and in the event of damages ensuing, a tort. If the law had been enforced, it would have been expected that such an offence, such a tort, would have been found to be every-day occurences in society; but, as a fact, the cases have been very rare, and have mostly arisen out of trade disputes between employers and workmen.

But malice—in the sense of ill-will or other bad motive—is not that a necessary part of the *prima facie* tort of a Conspiracy to injure? and, if so, does it not furnish the requisite limit? Were this the case, it would be only one solecism the more. Malice, in the case of individuals, does not make unlawful what without malice is lawful: and by an all-but universal rule§ malice is not an element in a tort by an individual. The question in an action of law being whether the Plaintiff has suffered any legal wrong, the presence of malice has not to be proved by the plaintiff, and the absence of malice is not a just cause or excuse for the defendant: nor would proof of malice negative the existence of anything which is otherwise good cause or excuse and is compatible with it. Malice in short is immaterial. It is true that the pleadings in these, as in other cases, usually contain the word "maliciously." The common averment is that the defendant did "maliciously," etc. But the word so used refers to legal malice, and has nothing to do with malice in the sense of bad motive. Its legal significance is now undisputed. It merely anticipates and by anticipation repels whatever, if anything, may afterwards be brought forward by the defendant, which, if proved, would be a sufficient defence. (See the judgment of Lord Bowen in the Mogul case, the opinions of Wills J. and Wright J., in Allen *v.* Flood; and the judgment of Phillimore J. in Boots *v.* Grundy.) The adverb "maliciously" is thus a mode of formal negation beforehand of the existence of any just cause or excuse whatever, or, which is the same thing, a general averment that what has been done to him by the defendant was wrongful. "Maliciously," therefore, adds nothing to what the plaintiff has to prove. For of course if the act of the defendant could not be shown to be wrongful, there could be no cause of action; and, as already stated, in order to succeed, the plaintiff has in any event to prove the *prima facie* tort, and also to disprove whatever the defendants offer as just cause or excuse.

Most judges, however, express the opinion,‖ though often in vague language, that in a conspiracy to injure there must be *malus animus*. And accordingly the practice in these

* An exception to this is what may be called the recently established tort of inducing breach of contract, which although involved in Lumley *v.* Gye was not fully recognised until that case was explained by Quinn *v.* Leathem.

† This is stated expressly by Lord Brampton in Quinn *v.* Leathem, p. 530.

‡ Sir William Erle, speaking of threats of evil, says, "Evil may be inflicted in respect of the manifold interests relating to person, property, reputation, or affection."—Memorandum, p. lxxxii.

§ Throughout these observations I abstain from referring to the special cases of action for defamation and action for malicious prosecution.

‖ *e.g.* Henn Collins, M.R., in McElrea *v.* United Society of Drillers: Coleridge, C. J., in the Mogul case. 21 Q.B., D. 549.

cases as distinguished from others—a practice commenced whilst the decision in Bowen *v.* Hall that what was lawful became unlawful if done with malice was in force, and continued since that decision was over-ruled in Allen *v.* Flood—seems to be that the judges lay stress upon the word "maliciously," if found, as it generally is, in the pleadings, and in putting the questions to the Jury, they are careful to use the word maliciously: * also in charging the Jury they usually direct them that in order to satisfy the word "maliciously" they must find that the defendants did not act merely from self-interest, but were actuated by some bad motive. At the same time—at all events when the plea of competition is entertained—the Judges repudiate the notion that it is incumbent upon the Court to regard the transaction from its moral aspect.† All Judges,‡ however, do not hold the view that malice in the sense of bad motive is a necessary element in conspiracy. Lord Bowen in his judgment in the Mogul case—which is always praised and has never been overruled, though in some respects it must be considered of doubtful validity—held that to individuals and to combinations alike it was forbidden to do malicious wrongs; but the malice in the malicious wrong described by him was not malice in the sense of bad motive, but only legal malice. He says:

"Intentionally to do that which is calculated in the ordinary course of events to damage and does in effect damage another in that person's property or trade is actionable if done without just cause or excuse, and that such intentional action when done without just cause or excuse is what the law calls a malicious injury."

Indeed Lord Bowen does not even mention the word malice in the sense of bad motive. Nevertheless under Lord Bowen's ruling the question of malice in the sense of bad motive inevitably comes in only in a different form at a later stage, when the question of just cause or excuse has to be considered. Just cause or excuse, he says:

"Could not exist when the act was done merely with the intention of causing temporal harm without reference to one's lawful gain or the lawful enjoyment of one's own rights. The good sense of the tribunal which has to decide would have to analyse the circumstances, and to discover on which side of the line the case fell.

Thus, either way, motive comes to be considered. The practical result is that, in all cases of conspiracy to injure if malice is an element of the tort, and in all defended cases if it is only to be used as an answer to the plea of just cause and excuse, the issue is made to turn on the motive, on the question of malice §—just that which in cases of acts done by individuals is, since Allen *v.* Flood, immaterial. What, however, malice means is only to be gathered from numerous judgments wherein the Judges have placed very various ¶ interpretations upon the word, and the result is vague and uncertain. Lord Esher declined to define malice, and said it was a question for the jury.

Then as to justification. The general law is that what constitutes just cause or excuse is a matter determined by law, and in strictness is for the Judge, as distinguished from the Jury, to decide according to law It would revolutionise the law if the defendant when sued for commission of a legal wrong might plead merely moral justification, and a judge and jury were bound or even at liberty to accept it. I may add that in no case, so far as I am aware, is the plea of mere self-interest—as distinct from that of a right—on the part of the defendant recognised by law as a just cause or excuse. But in the case of conspiracy to injure the practice is different. As the *prima facie* tort is indefinite, so is the justification. With one exception, there is nothing settled as to what shall constitute justification. That exception is competition, Otherwise the justification required is what the judges and jury may think in

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* See observations of Lord Watson on this practice in pp. 92, 93 of the report of Allen *v.* Flood which at the time of the questions being put to the Jury was an action for conspiracy, though when the case was considered by Lord Watson, it had been reduced to an action of tort by an individual.

† "It is absolutely unnecessary to consider whether those grounds were morally or commercially justrfiable They were not unlawful," per Lord Field in the Mogul case, p. 54, and see observations of Fry L. J. in the same case, 23 Q.B.D. 625; and Lord Coleridge in Gibson *v.* Lawson.

‡ In the very recent case of the Glamorganshire Coal Co., *v.* The south Wales Miners' Confederation Vaughan Williams L. J. observed that the Plaintiff in a suit of conspiracy was under no obligation to prove malice in the first instance, though he was at liberty to prove it to rebut justification. Lord Lindley—so I infer from his judgment in the House of Lords in the same case—does not concur in this view. But it is remarkable that Lord Lindley and Lord James of Hereford both stated that in that case it was not necessary to prove malice, and Lord Lindley recommended the disuse in similar cases of that word altogether. That case it is true was a conspiracy to commit a tort (the tort of inducing breach of contract), not a conspiracy to injure. But until Quinn *v.* Leathem a conspiracy to induce breach of contract had been treated as a conspiracy to injure, and in both cases the use of the word "malicious" was similar.

§ Compare the extract, quoted above. p. 78 from p. lxxi. of Sir William Erle's Memorandum relative to acts of individuals.

¶ See the comments of Lord Herschell on this point is Allen *v.* Flood. p. 118.

their discretion amounts to justification; in other words, it is moral justification. The consequence is that on the one hand such a defence as self-interest on the part of the defendant may be taken into consideration (though in Trade Union cases at least it has rarely been accepted as just cause or excuse) and on the other the proof of malice or bad motive of some sort, being incompatible with moral justification, is said to negative the existence of any just cause or excuse whatever.* The upshot of the whole is that the law of Conspiracy to injure, as recognised in Quinn *v.* Leathem, places it in the power of a Judge and Jury, if in their discretion they should so think fit, to treat any joint conduct whatever as actionable and, except so far as barred by the Act of 1875, criminal.

That by this law workmen engaged in a trade dispute are placed at a special disadvantage cannot be doubted. It is only necessary to realise the course of an action of conspiracy to injure brought against workmen for their conduct with reference to a strike. For the "injurious act" one may take at random any act done in the promotion of a strike—such as an announcing of the strike to the employer, or an inducing by persuasion, or payment, but not intimidation of workmen to leave the employer's service (without breach of contract), or not to enter it, or the starting of a secondary strike. These acts are assumed to be not forbidden to individuals by the law, whether criminal or civil. (It is true there are *dicta* that they are forbidden: but if they are forbidden, then it is manifest that a legal strike is an impossibility.) But the plaintiff can have no difficulty in making out a *prima facie* tort. A strike being an industrial war, there are present of necessity all the elements of a conspiracy to injure, viz.: harm, intention to do harm, combination to do harm. For justification the defendants have nothing to offer but the plea of self-interest. To rebut this (or, if such is the law, to complete the proof of a *prima facie* tort) the plaintiff alleges bad motive. This too can never be wanting. For every strike, every act of every strike, is necessarily a hostile operation, the strikers have always the object to force the employer to change his mode of business—just as the employer's object is to force upon the workmen terms of their employment—and this is regarded by the law as an evil motive.† Then the question is put to the jury; "Did the defendants act from the motive to do harm to others or from the motive to benefit themselves? Or did they act more from the one motive than from the other?" A question as difficult to answer as would be a question concerning a soldier who, after taking aim, fired off his rifle in time of battle, whether his predominant motive was to help his country or hurt his enemy. But the jury have to find an answer, and this answer can hardly fail to be unfavourable. Not to speak of their probably not including in their number any working man, nor to impute to them the common bias of assuming all strikers to be disturbers of industry and insurgents against lawful authority, nor to suppose that in matters of political economy they are prejudiced in favour of the theory of individualism and opposed to that of collective action, the Jury will have presented to them the picture of strikers angry and excited, and of the loss and distress which are the visible and immediate consequences of a strike and have been intentionally caused by the strikers; and when the question is thus put to them, it would be strange indeed if they did not attribute the intentional acts of the strikers rather to a desire to inflict these evils than to the hope of advantages to be obtained if the strike is successful—advantages unseen, remote, and a matter of indifference to the Jury. The truth, nevertheless, Trade Unionists would urge, is the contrary. In a strike, as in trade competition, there may be, in most cases there probably is, ill-feeling on both sides, at all events after the strike has gone on for some time, but no strike was ever either commenced or maintained out of spite to master or man, any more than a lock-out was ever declared by employers to spite the employed. Workmen strike, and employers lock-out, for their own prospective advantage; otherwise they would not care to lose their wages or their trade. Moreover, in every organised trade a strike is simply a matter of policy for the Trade Union. It was so in the case of Quinn *v.* Leathem. The proceedings taken against Leathem and Munce were the application to them of the general rule which the Trade Union had adopted two months before as their future policy, that members of the Trade Union should not work for butchers who themselves employed non-Unionists, or who,

* This, notwithstanding the similarity of terms, is not to be confounded with the allegation of legal malice in the pleadings which is a general and formal denial, in anticipation, of any just cause or excuse that may be brought forward.

† R. *v.* Rowlands and R. *v.* Bunn, both of which must after Quinn *v.* Leathem be considered to be still good law.

whilst themselves not employing non-Unionists, bought their meat from other butchers who did.

The indefiniteness of the law of conspiracy to injure prevents it from being a practical guide of conduct to workmen as to what they may do in times of strike and what they must avoid. The mere fact that two make a conspiracy is enough in the case of unwritten law to produce confusion, where unspecified acts, lawful for individuals, are to be made unlawful when done in combination. But the law itself is unintelligible to workmen. The defendants in Quinn v. Leathem, after judgment had been given against them, must presumably have been at loss to understand which in particular of the acts done by them it was that, though not unlawful for individuals, was condemned as unlawful to be done in combination, or in what respect their strike differed from an ordinary strike against individual non-Unionists. They could only know that, reviewing their conduct as a whole, the House of Lords had pronounced their combination to be an oppressive combination, a conspiracy to injure.

The perplexity as to the scope of the law is not confined to workmen. I believe it is no exaggeration to say that a lawyer is unable to advise a Trade Union with any confidence on elementary points connected with a strike and with public order—as, for instance, whether it is actionable for a committee or for two or more workmen acting together to organise a strike against non-Unionists at all; or to threaten an employer with a strike; or to prompt a strike to workmen not predisposed to strike; or when the strike has been once started to persuade other workmen to join it, and especially to persuade men in the service of the employer to leave that service, or workmen in the service of employers in other trades to strike in sympathy.

For these reasons it appears to me that the law of conspiracy to injure is a law unfitted for workmen in case of Trade Disputes.

It only remains briefly to consider whether to make the change in the law as proposed by the Report would be to licence practices which ought to be repressed by the law. The change proposed is to enact:—

"An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be the ground of a civil action unless the agreement or combination is indictable as a conspiracy notwithstanding the terms of the Conspiracy and Protection of Property Act, 1875."

The chief object is to eliminate from trade disputes civil actions for conspiracy to injure. But to understand the effect of the words used it is necessary to bear in mind that an offence causing damage is a tort, and that actions for a tort would not be interfered with by the enactment. Trade Unionists remain, of course, subject to the ordinary law of torts, and I may add that by Quinn v. Leathem explaining Lumley v. Gye, inducing breach of contract is now a recognised tort. They are also subject to the ordinary criminal law, in particular, I may mention, to the law against riot and breach of the peace, and to the provisions of Sec. 7 of the Act of 1875, which though nominally of general application practically deals with offences of molestation only likely to occur in case of Trade Disputes. If there is anything more which ought to be prohibited, this could be effected by adding either to the reservations in Section 3 of the Act of 1875 or to the list of offences in Section 7. The prohibition would thus be enacted after discussion on the merits, and being recorded in a Statute would be intelligible to workmen and their advisers. Then as to the probable practical consequences of the suggested enactment. On this point much may be learnt from the action of Parliament in 1871 with regard to restrictions upon criminal proceedings for conspiracy in Trade Disputes (civil proceedings for damages caused by the same offence not being at that time under contemplation). The Criminal Law Amendment Act of that year, after creating a number of offences in the nature of acts of molestation or coercion which were likely to be committed in times of Trade Disputes and correspond to the offences in Sec. 7 of the superseding Act of 1875, contained a proviso that—

"No person shall be held liable for doing or conspiring to do any act on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as is hereinbefore mentioned."

The Act of 1871 is no longer in force, having been superseded by that of 1875, but it was repealed not because it had opened the door to any disorder or molestation, but because it was found not to give protection to workmen against criminal prosecution for such acts of so-called molestation or coercion done in combination as Parliament considered ought not to be punishable. It is of course impossible here to describe the various hostile acts done in times of strike which are not unlawful for individuals to do, and which when done in combination would be precluded by the proposed enactment from being made the subject of civil proceedings for conspiracy to injure, just as they have been precluded by the Statute of 1875 from being made the subject of criminal proceedings. But perhaps it may be well to test the general

question by one example to serve for all. For this purpose I will take the practice of Trade Unionists (wherever the Union is strong enough) to combine to refuse to work with non-Unionists, which has and is intended to have the result of making it difficult or impossible for non-Unionist workmen to find employment. No practice is more characteristic of Trade Union policy; none creates more trouble to employers; none excites more general repugnance. It is always intolerant, and when applied against individuals operates as personal persecution.* But should it be actionable? To strike for this purpose is admittedly lawful for individual workmen. Should it be unlawful for two or three in combination to start or promote such a strike? Or if *prima facie* unlawful, why may not the plea of competition be accepted? To Trade Unionists Non-Unionists are permanent rivals; acting in their own interests they undersell them in the labour market, take the side of the employer against the Unionists in time of strike, and if the strike is successful seek to share the fruits obtained by the sacrifices of the Unionists. Employers again, who are injured by this Trade Union policy, may also be said to be permanent rivals of workmen in so far as with respect to terms of employment they compete with workmen in the labour market, where whatever one party gains the other loses. Further, though the law is the same for all, it does not, in practice, interfere when the same policy as that of Trade Unionists against Non-Unionists is pursued by others—by employers who refuse and induce other employers to refuse employment to Trade Unionist workmen or to those who have been prominent in strikes†; or by traders who, as in the Mogul case and the Scottish Fleshers' case, merely in their own interest combine to exclude rival traders from the market, though, as they well know, the consequences may be their ruin. The policy of Trade Unions is the subject of the following observations by Lord Watson in the case of Allen *v.* Flood :—

> It is in my opinion the absolute right of every workman to exercise his own option with regard to the persons in whose society he will agree or continue to work. It may be deplorable that feelings of rivalry between different associations of working men should ever run so high as to make members of one union seriously object to continue their labour in company with members of another Trade Union; but so long as they commit no legal wrong or use no means which are illegal they are at perfect liberty to act upon their own views.

But the practical test is this: Would Parliament be willing to legislate so as to declare strikes against Non-Unionists or promotion of such strikes to be an actionable wrong? If not, why should it leave in the hands of Judges and Juries the arbitrary power of treating them as actionable, if in their discretion they think fit to do so?

On a review of the whole matter, I am of opinion that no ground exists of public policy or justice to private interests to make it necessary that in Trade Disputes conspiracy to injure should continue to be a cause of action.

The proposed enactment as to civil proceedings for conspiracy should be read as one with Sec. 3 of the Act of 1875, so as to be qualified by the reservations in that Section.

In the proposed enactment the words "between Employers and Workmen" do not, as in Section 3 of the Act of 1875, follow so as to qualify the term "Trade Disputes." The object of this omission is that the proposed enactment may apply to Strikes against Employers promoted by Workmen not in their service, and to secondary Strikes. With this object I entirely sympathise, though whether the omission suggested is the best way of effecting it may be doubtful. Whatever course is taken with the proposed enactment should be followed with Section 3 of the Act of 1875.

In Appendix II. to these observations I have added an epitome of cases in chronological order, in the hope that it may be a convenience to those who may have to consider the Report of this Commission from a strictly legal point of view.

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* See observations of Lord Herschell in Allen *v.* Flood, p. 131, as to Strikes against non-Unionists being alleged to be vindictive.

† Bulcock *v.* St. Anne's Master Builders' Federation.

(Signed) GODFREY LUSHINGTON.

APPENDIX I.

NOTIFICATION OF A STRIKE AS A THREAT.

In the case of Trades Unions (of Workmen or Masters) threats have been made criminal by special enactment. By the Act 6 G. IV., c. 129 (repealing the Act of the preceding year which had repealed the Combination Laws), whoever by violence to person or property, or by *threats* (undefined), or *intimidation* (undefined), or by molesting (undefined), or in any way obstructing (undefined) another, forced or attempted to force any journeymen or manufacturers, etc., was made liable to three months' imprisonment. This enactment was enforced directly by summary prosecution, but often by indictment for the Common Law misdemeanour of conspiring to commit the statutory offence. By this means a severer penalty could, if necessary, be inflicted. The Judges interpreted threats and intimidation as occurring in the statute to mean the saying or doing of anything which would have a deterrent effect upon persons of ordinary nerve, a definition manifestly including a notification of a strike. The following are examples :

1861. "Walsby v. Anley." (3 Ell and Ell, 516.) A case for the opinion of the Queen's Bench was stated by a Metropolitan Magistrate who had convicted Walsby of threats under 6 G. IV., c. 129, Sec. 3, with a view to force the respondent to limit the description of his workmen. In the year 1859, there had been a strike of workmen, and the respondent Anley then resolved not to employ any workmen who declined to work under the 'declaration,' a document in these terms : "I declare that I am not nor will I during any engagement with you become a member or support any Society which directly or indirectly interferes with the arrangements of this or any other establishment, or the hours or terms of labour, and that I recognize the rights of employers and employed individually to make any trade engagements on which they may 'choose to agree''. On 16 May, the defendants and two workmen, working for Anley, brought him a paper signed by Walsby and thirty other workmen. "At a meeting of the joiners in the employ of Mr. Anley, Tuesday evening, 15 May, it was resolved that Mr. Anley be given to understand that unless the men who are working under the declaration in his shop be discharged and we have a definite answer by dinner time to that effect we cease work immediately." The appellant (Walsby), in reply to questions thereupon put by Anley, said that he and the other workmen had no fault to find with Anley, his foreman or clerks, nor had he any fault to find with the wages received; and when Anley asked what it was he wanted, answered, "You must discharge those two men who are working under the declaration, and if you do not we will leave work."

On this, Walsby was convicted of intimidation and sentenced to a month's imprisonment, and the conviction was upheld by the Court of Queen's Bench.

Cockburn, C. J.—"I am of opinion that this conviction must be affirmed. I am decidedly of opinion that every workman who is in the service of an employer and who is not bound by agreement to the contrary is entitled to the free and unfettered exercise of his own discretion as to whether he will or will not continue in that service in conjunction with any other person or persons who may be obnoxious to him. More than this: any number of workmen who agree in considering some of their fellow workmen obnoxious, have each a perfect right to put to their employer the alternative of either retaining their services by discharging the obnoxious persons, or losing their services by retaining those persons in his employment. But if they go further and, not content with putting the alternative to the employer, combine to coerce him, by threats of jointly doing something which is likely to operate to his injury, into discharging the obnoxious person, I think that they may properly be said to bring themselves within the scope of the third section of the Statute. In the case before us it was not one man who went to the employer and said that he should leave if the obnoxious workmen did not, nor several men merely, who adopting the same course gave their master the option of retaining them or the obnoxious men in his service, but several men who combined together with the object of coercing the master into dismissing the obnoxious workmen, by the threat of otherwise leaving in a body at a moment's notice. Although I at first entertained some slight doubts whether what was said amounted to a threat, I have no doubt whatever that the conduct of the appellant and the other malcontent workmen amounted to a 'molesting' of the master within the meaning of the Act, and that their proceedings were altogether illegal, whether it is said that they 'threatened and intimidated' or that they 'molested and obstructed' the respondent, their employer in his business."

This case was followed in other instances, *e.g.*, "Skinner v. Kitch," 1867, 10 Cox. C.C., 493.

1866. "Wood v. Bowron." A strike took place; a few weeks afterwards the employer wrote and asked why; he should like to know what the society required him to do. In reply defendant sent to him a copy of the resolution of the society, that no society bricklayer should work for him until such time as he should part with his apprentices . . . Until such time, no society bricklayer would work with him; and further there would be so much expenses, £18, to pay as well. Two days afterwards a considerable number of employers met and resolved to discharge their men unless Bowron's men resumed their work before Monday morning, and that a copy of this resolution should be forwarded to the secretary of the Builder's Labourers' Association. The workman was then prosecuted on the ground that the communication he had sent to the prosecutor was a threat within the Statute; and he was convicted and sentenced. The Court, however, quashed the conviction.

It was to obviate the recurrence of such cases that Parliament passed the Criminal Law Amendment Act of 1871, 34 and 35 Vic., c. 32, which repealed the Act of 6 George IV., c. 129, and enacted instead by Sec. 1 that every person who shall threaten or intimidate any person—in such manner as would justify a justice of the peace, on complaint made to him, to bind over the persen so threatening or intimidating to keep the peace—with a view to coerce such person being a master, to dismiss, &c., should be liable to three months' imprisonment. The Act of 1871 was itself superseded by the Conspiracy and Protection Act of 1875, 38 and 39 Vic., cap. 86, now in force, which contained a substitutive provision in Sec. 7, imposing the like punishment on every person who should be convicted of having, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully and without legal authority used violence to or *intimidated* such other person or his wife, or children or injured his property. It will be observed that the Statute does not mention threats, and that in using

the word intimidates it does not define it. The question then once more arose whether a Notification of a Strike amounted to intimidation within the Statute.

In "Judge v. Bennett" (1) the defendant was convicted of intimidation, but he had notified not only that the men would strike but that the premises of the employer would be picketed. However the Judges, Stephen, J. and A. L. Smith, J. interpreted "intimidation" to mean any thing which causes a person to fear. Ultimately the question whether in a criminal prosecution under the present Statute a Notification of a Strike amounts to intimidation was settled by the Queen's Bench Division in two cases which came before it at the same time, "Gibson v. Lawson" and "Curran v. Treleaven." (2).

1891.—"Gibson v. Lawson."—The respondent Lawson, belonging to the Amalgamated Society of Engineers, and appellant Gibson, belonging to the National Society of Engineers, were both fitters employed in the ship-building yard of Messrs. Palmer & Co. The Amalgamated Society passed a resolution that their members should not work in the yard unless Gibson joined their Society, and Lawson communicated this resolution both to Gibson and the Manager. Gibson refused to join, and was dismissed by the Manager in order to prevent a strike. No violence or threats of violence either to person or property were used to Gibson, but he swore that he was afraid of what Lawson had said that he would lose his work and would not get employment at either of Messrs. Palmer's yards or anywhere where the Amalgamated Society predominated numerically over his own Society. Gibson then prosecuted Lawson for the statutory offence of intimidation. The Justice dismissed the case. Gibson, the prosecutor, appealed. The Queen's Bench Division directed judgment to be entered for the defendant.

Lord Coleridge, in delivering the judgment of the Court, said:

It seems clear, however, looking at the course of legislation, and keeping in mind the changing temper of the times on this subject, that the word 'intimidate' in the 7th Section of the later Act cannot reasonably be construed in a wider or severer sense than the same word in Clause 2 of Sec. 1 of the earlier Act. 'Intimidate' is not, as has been often said by judges of authority, a term of art, it is a word of common speech and every-day use, and it must receive, therefore, a reasonable and sensible interpretation according to the circumstances of the cases as they arise from time to time. We do not propose to attempt an exhaustive definition of the word, nor a complete enumeration of the cases to which it may be properly, nor of those to which it may be improperly, applied. It is enough for us to say that in this case it appears to us all there was nothing which under any reasonable construction of the word intimidate could be brought within it. Whether the action of the Amalgamated Society was morally right or not, is a matter upon which we express no opinion, because it is not the question before us. It seems to us it was not illegal within the words of the Act of Parliament under which the summons was issued.

1891. Curran v. Treleaven.—Curran, a delegate who had given notice of a strike, was convicted by the magistrate of intimidation within Section 7 of the Conspiracy and Protection to Property Act; the conviction was appealed against, but upheld by the Recorder, Mr. Bompas, and finally quashed by the Queen's Bench Division on a case stated for their opinion. The strike was against the employment of non-Unionist workmen and involved breach of contract. Curran stated openly to the employer, Mr. Treleaven, that if Mr. Treleaven would not agree to discharge the non-Union men and employ for the future only Union men, he and the defendants would endeavour to compel him to do so by calling out the members of their Union then working for him, and prevent Members of the Union from working for him for the future; and thus render it difficult or impossible for him to carry on his business. A few days later, Mr. Treleaven continuing to refuse to comply, the defendants, in the presence of Mr. Treleaven, whom they had asked to hear it, made the following statement to his workmen and others who were assembled on the wharf:—

"Inasmuch as Mr. Treleaven still insists on employing non-Union men, we, your officials, call upon all Union men to leave their work; use no violence; use no immoderate language; but quietly cease to work and go home."

On the evidence of the above facts the Recorder was of opinion—

(1) That Mr. Treleaven was afraid of injury to his trade through the course which the defendants stated the Union would pursue, and that he had reasonable grounds for that fear which would have influenced any man of ordinary sound nerves.

(2) That the defendants invited him to listen to what they said, because they intended to cause this fear, and with the view of inducing him in consequence to discharge the non-Union men who were working for him.

(3) That the direct object of the defendants in calling out the men was to injure the business of Mr. Treleaven, and not because of anything in the terms of the employment of the men to which the defendants or the men themselves objected.

(4) That the Union-men, in leaving their employment at the request of the defendants, were, as the defendants knew, breaking their contracts.

(5) That the defendants did not desire or intend that any personal violence should be used or injury done to Mr. Treleaven or his property: that it was not proved that their words or acts were likely directly to cause any such violence or injury: although the Recorder was of opinion that such violence or injury might occur from the action of the members of the Union in consequence of the strike, but against the wishes and intentions of the defendants.

(6) That the defendants had no ill-will against Mr. Treleaven personally, but acted with the object of obliging all the labourers to join the Union as a means of getting employment and of obtaining for the members a monopoly of the labour of the port.

The Court reversed the decision of the Recorder, Lord Coleridge, C.J., observing:—

"As we said in an earlier part of the judgment, we do not propose to enter upon an exhaustive enumeration of all the possible acts which do and of those which do not constitute intimidation within the Section. But we say that to tell an employer that if he employs workmen of a certain sort, the workmen of another sort will be told to leave him, and to tell the men, when the employer will not give way, to leave their work, use no violence, use no immoderate language, but quietly cease to work and go home (we quote the language of the Recorder), is certainly not intimidation within any reasonable construction of the Statute.

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(1) 1887, 36, W.R. 103.
(2) 1891, 2. Q.B. 545.

We do not think that the Legislature intended by change of words in Sub-section 1 of Section 7 of 38 and 39 Vic., cap. 86, to send the Courts back to 6 G. iv., c. 129, for an interpretation of the word 'intimidate,' although the later Statute of Victoria did repeal the 34 and 35 Vic., cap. 32, which limited intimidation to cases which would justify a Magistrate in binding over to keep the peace. There is indeed much to be said for the view entertained by my brother Cave and acted upon by him (as mentioned by the Recorder in his judgment) in a case tried before him at Liverpool (1), viz., that intimidation in the 38 and 39 Vic., c. 86, must still be limited to threats of personal violence as enacted by the Act 34 and 35 Vic., cap. 32. It may become necessary to decide this point in time to come: it is not now; and we confine ourselves to the negative statement that the 6 G. iv., c. 129, is not now on this subject the governing Statute."

[Since "Curran v. Treleaven" a Notification of a Strike may be said not to constitute the offence of intimidation within the Act of 1875. There is, I believe, no instance of a threat being indictable at Common Law, and threats (except threats to extort money) are not an offence punishable under any general Statute: but specially grave threats of violence may subject the person using them to be bound over to keep the peace. Are, then, threats actionable? Of this also I believe there is no instance on record.

Nevertheless the threat of a strike has been recently pronounced in the House of Lords to be illegal intimidation in cases where workmen separately or in combination have been sued for injury to a trader by means of threats or intimidation. It is especially treated in the case of conspiracy to injure, as imparting an element of unlawfulness to the combination.]

The question came up in the course of "Allen v. Flood," which was a civil action against Allen, a Trade Union delegate, for having, with intent to injure the plaintiffs (two shipwrights), induced the Glengall Iron Company to discharge them and not to enter into contracts with them. Allen had told the manager that the two shipwrights were known and wherever they were employed the same action would be taken against them. "You have no option," he said, "if you continue to engage these men, our men (a very large number of iron-men) will be called out."

On this Mr. Justice Hawkins, one of the Judges called upon for their opinion by the House of Lords, remarked:

P. 13. "It was on account of the expression: "You have no option," that the plaintiffs were discharged by Mr. Halkett the manager, who was in fear of the threat being carried out, which would seriously have impeded the business of the Glengall Company, the threat being extended to every iron-work-man of the Company at whatever place employed. If this was not coercion to do that which was not the will of the Glengall Company to do, I know not what coercion is: at all events, it was evidence for the Jury to consider." And he thus laid down the law:

P. 17. "In my opinion any menacing action or language, the influence of which no man of ordinary firmness or strength of mind can reasonably be expected to resist, if used or employed with intent to destroy the freedom of will in another and to compel him through fear of such menaces to do that which is not his will to do, and which being done is calculated to cause injury to him or some other persons, amounts to an attempt to intimidate or coerce: and if such attempt is successful, the object attained under such influence is attained by coercion, and the person wrongfully injured by it, whether in his person, property or rights, may sue the coercer for reparation in damages."

And ultimately Mr. Justice Hawkins reported in these words:

"Being satisfied that the right of the plaintiffs is established at Law, I think there is abundance of evidence fit to be left to the Jury that without excuse or justification, and not in the exercise of any privilege or in defence of any right either of his own or of the boiler-makers, the defendant has wilfully and unlawfully, unjustly and tyrannically invaded and violated the plaintiffs' right, by intimidating and coercing their employers to deprive them of their present and future employment; and the plaintiffs therefore are entitled to maintain their action."

The defendant's Counsel had invoked the judgment of the Queen's Bench Division in the cases of "Gibson v. Lawson" and "Curran v. Treleaven," as showing that Allen's words could not be deemed to amount to intimidation. But Mr. Justice Hawkins rejected this argument: he considered these cases as not authorities which assisted the defendant in his contention: they were cases merely dealing with the limited character of intimidation necessary to justify a criminal conviction under the Conspiracy and Protection of Property Act, and did not profess to deal with rights or wrongs at Common Law p. 17.

Lord Morris (p. 160) adopted the finding of Hawkins, J. The Lord Chancellor took the same view: (p. 83.):

"There was no threat of violence to person or property, it is true; but the word "intimidation" is not always to be construed as it has been construed under 6 G. IV., c. 129. The construction of it in that Statute flowed from the other words with which the word "intimidate" is used: and if, without using the word intimidate, that which was held out as the inducement to dismiss the plaintiffs was that such a stoppage of the works should be occasioned as that the business of the Company would seriously suffer, I should think that would be a thing which would be likely to produce fear of the consequences of the Company retaining them in their employment; and a Company which abstained from doing so by means of that fear would justly be described as intimidated."

Lord Ashbourne also concurred that the defendant had intimidated and coerced (p. 114). These views were not in accordance with the opinion of the Judge who had tried the case, and who had reported that "there was no evidence here, of course, of anything amounting to intimidation or coercion in the legal sense." Nor were they accepted by the majority of the Law-lords, of whom it will only be necessary to quote Lord Watson ("Allen v. Flood," p. 99):

"They (the iron-workers about to strike) were, in my opinion, entitled to inform the Glengall Iron Co. of the step which they contemplated, as well as of the reasons by which they were influenced, and that either by their own mouth, or, as they preferred, by the appellant (Allen the delegate) as their representative. . . It was clearly for the benefit of the employers that they should know what would be the result of their retaining in their service men to whom the majority of their workmen objected; and the giving of such information did not, in my opinion amount to coercion of the employers, who were in no proper sense coerced, but merely followed the course which they thought would be most conducive to their interests."

(1) "Reg. v. McKeevit," Liverpool Assizes, *Times*, 16 December, 1890.

In "Quinn *v.* Leathem," a case of Conspiracy, the Union Executive, at a meeting where the plaintiff was present, passed a resolution that the plaintiff's assistants should be called out, and the plaintiff was told that his meat should be stopped at Munce's (*i.e.*, that the Unionists working in the shop kept by Munce, a retail butcher who was a regular customer of the plaintiff, would be called out) if he, the plaintiff, did not comply with their wishes; and again later on the plaintiff was written to that if he continued to employ non-Union labour, the Society would be obliged to adopt extreme measures: and the defendants said that the plaintiff's men should be punished and be put to walk the streets for twelve months. The Lord Chancellor expressed (p. 507) the opinion that there were threats and threats carried into execution, and Lord Lindley (p. 536) observed:

"What the defendants did was to threaten to call out the Union workmen of the plaintiff and his customers if he would not discharge some non-Union men in his employ. In other words, in order to compel the plaintiff to discharge some of his men, the defendants threatened to put the plaintiff and his customers and persons lawfully working for them, to all the inconvenience they could without violence.

P. 538. A threat to call men out given by a Trade-Union official to an employer of men belonging to the Union and willing to work with him, is a form of coercion, intimidation, molestation, or annoyance to them and to him, very difficult to resist, and to say the least requiring justification."

In this condition the law rests.

APPENDIX II.

The Statutes bearing on the legal history of Trade Unions are:

1800.—41 Geo. III. c. 106. Unlawful Combinations of Workmen. Repealed with other Combination Laws by Act of 1824.
1824.—5 Geo. IV. c. 67. Repeal of Combination Acts. Repealed by Act of 1825.
1825.—6 Geo. IV. c. 129. Substituted for Act of 1824. Repealed by Criminal Law Amendment Act, 1871.
1859.—22 Vic. c. 34. Amending Act as to Peaceful Persuading. Repealed by Criminal Law Amendment Act, 1871.
1869.—32 and 33 Vic. c. 61. Temporary Act for Protection of Trade Union Property. Expired.
1871.—34 and 53 Vic. c. 31. Trade Union Act, 1871 (Trade Union status). In force.
1871.—34 and 35 Vic. c. 32. Criminal Law Amendment Act, 1871. (Strike offences.) Repealed by Conspiracy and Protection of Property Act, 1875.
1875.—38 and 39 Vic. c. 86. Conspiracy and Protection of Property Act, 1875. In force.
1876.—39 and 40 Vic. c. 22. Amending Trade Union Act of 1871. In force.
1883.—46 and 47 Vic. c. 47. Provident Nominations and Small Intestacies Act.
1893.—56 and 57 Vic. c. 2. Trade Union Provident Funds Act.

REPORTS OF ROYAL COMMISSIONS BEARING ON TRADE UNIONS.

1869. On Organisation and Rules of Trade Unions and other Organisations.
1875. On the Master and Servant Act, 1867, and Criminal Law Amendment Act, 1871.
1879. On the Law relating to Indictable Offences.
1894. On Labour.

PRINCIPAL CASES REFERRED TO.

1843. "Gregory *v.* Duke of Brunswick." 1 C. and K. 24; 6 M. and G. 205, 983; 6 Scott N.R., 809; and 1 D. and L. 518; 1 Kar. and K. 24; 3 C. B. 481.
1851. "Reg. *v.* Rowlands." 2 Den. 364; 5 Cox 404, 460; 17 Q.B. 671.
1853. "Lumley *v.* Gye." 2 E. and B 216.
,, "Stevenson *v.* Newnham." 13 C.B. 285.
1856. "Hilton *v.* Eckersley." 6 E. and B. 47.
1861. "Walsby *v.* Anley." 3 E. and E. 516.
1866. "Wood *v.* Bowron." L.R. 2 Q.B..216.
1867. "Reg. *v.* Druitt." 10 Cox 601.
,, "Hornby *v.* Close." L.R. 2 Q.B. 153.
,, "Skinner *v.* Kitch." L.R. 2 Q.B. 393.
1870. "R. *v.* Warburton." L.R. 1 C.C. 274.
1872. "R. *v.* Bunn." 12 Cox 316.
1880. "Duke *v.* Littleboy." 49 L.T. Ch. 802.
,, "Rigby *v.* Connol." 14 C.D. 482.
1881. "R. *v.* Parnell." 14 Cox 508.
1882. "Wolfe *v.* Matthews." 21 C.D. 194.
1885. Mogul case (Injunction). 15 Q.B.D. 476.
1887. "Bowen *v.* Hall." 6 Q.B.D. 333.
1888. Mogul case (Q.B.D.) Lord Coleridge. 21 Q.B.D. 554.
1889. Mogul case (Court of Appeal). 23 Q.B.D. 598.
1891. "Kearney *v.* Lloyd." 1891. 26 I.R. 268.
,, "Salaman *v.* Warner." 7 T.L.R. 431 and 480.
,, "Peto *v.* Apperley." *Law Times*, 10th October, 1891.
,, "Haile *v.* Lillingstone." *Law Times*, 10th October, 1891.
,, Mogul Case (House of Lords). 1892. A.C. 25.
,, "Curran *v.* Treleaven." 2 Q.B. 545.
1892. "Jenkinson *v.* Neild." 8 T.L.R. 540.
1893. "Temperton *v.* Russell. 1893. 1 Q.B. 435; 715.
1894. "Flood *v.* Jackson." Jury Trial. 1895. 2 Q.B. 21.
1895. "Flood *v.* Jackson." Court of Appeal. 1895. 2 Q.B. 21.
,, "Trollope *v.* London Building Federation," 72 L.T. N.S. 342; and 12 *Times L.R.* 373.
1896. Feb.—"Lyons *v.* Wilkins" (Injunction). 1896. 1 Ch. 811.
,, Nov.—"Leathem *v.* Craig." Jury Trial.
1897. "Huttley *v.* Simmons."—Jury Trial.
,, Nov.—"Lyons *v.* Wilkins. —Jury Trial.
,, Dec.—"Allen *v.* Flood" (House of Lords). 1898. A.C. 1.
,, Dec. 18.—"Huttley *v.* Simmons"—Judgment. 1898. 1 Q.B. 181.
1898. "Scottish Co-operative Society *v.* Glasgow Fleshers' Association." 35 Scottish L.R. 645.
,, Feb.—"Lyons *v.* Wilkins."—Decision of Byrne, J. 1899; 1 Ch. 255.
,, Nov.—"Lyons *v.* Wilkins"—Appeal. 1899. 1 Ch. 255.
,, Nov.—"Leathem *v.* Craig" (Queen's Bench Division). 1899. 2 I.R. 667
1899. Nov.—"Leathem *v.* Craig" (Court of Appeal). 1899. 2 I.R. 667.
1900. "Boots *v.* Grundy." 82 L.T. 769.
1901. "Quinn *v.* Leathem" (House of Lords). 1901. A.C. 495.
,, "Bedford (Duke of) *v.* Ellis." 1901. A.C. 10.
,, "Taff Vale Railway Company *v.* Amalgamated Society of Railway Servants." 1901. 1 K.B. 175; A.C. 426.
1902. "Giblan *v.* National Amalgamated Society of Labourers." 18 T.L.R. 500; 1903. 2 K.B. 600.
,, "Read *v.* Friendly Society of Operative Stone Masons"—Appeal from County Court. 1902. 2 Q.B. 88.
,, "Glamorgan Coal Co. *v.* South Wales Miners' Federation." 1902. 1 K.B. 118; and 1903, 2 K.B. 535. House of Lords. 1905. A.C. 256.
,, "Read *v.* Friendly Society of Stone Masons"—Court of Appeal. 1902. 2 Q.B. 732.
,, "Bulcock *v.* St. Anne's Master Builders' Federation." 19 T.L.R. 27.
1903. "Howden *v.* Yorkshire Miners' Association."—Court of Appeal. 1903. 1 K.B. 308. House of Lords. 1905. A.C. 239.
1904. "Denaby and Cadeby Main Collieries, Ltd., *v.* Yorkshire Miners' Association." *Times*, 28th, 29h, 30th January; and 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, and 15th February, 1904; 29th May, 1905.
,, "McElrea *v.* the United Society of Drillers" and others. *Times*, 13th April, 1904; 17th February 1905.
1905. "Airey *v.* Weighill" and others. *Times*, 11th February, 1905.
,, "Cullen *v.* Elwin" and others. *Times Law Rep.*, xx., 490.
,, "Ward, Lock & Co., Ltd., *v.* Operative Printers' Assistants' Society. *Times*, 6th July, 1905.

1843. *Gregory* v. *Duke of Brunswick.* Action for Conspiracy. The declaration alleged that the defendant and another had conspired to prevent the plaintiff from earning his living as an actor by hissing him off the stage. The defendants pleaded in their fourth plea that the plaintiff was a scandalous knave, &c., and that on his appearance on the stage the defendants did hiss him a little. On special demurrer it was held that this fourth plea was no answer to a charge of Conspiracy to prevent the plaintiff from earning his living, but only an answer to one overt act of such Conspiracy, viz., the hissing. The defendants were granted leave to amend, but declined to avail themselves of it, so the plaintiff had judgment on the fourth plea. The case then went to trial. The counsel for the plaintiff did not attempt to prove that malicious hissing by one individual alone was a cause of action—though it appears to have been considered by some to be an arguable point—but he did endeavour to prove a Conspiracy. The Judge in his charge ruled that if it was established against the defendants that they had acted in pursuance of a perconcerted plan to drive the plaintiff off the stage, they would without question be liable to that action. Verdict, however, was given for the defendants. The plaintiff then moved for a new trial on the ground of misdirection by the Judge. The alleged misdirection was that the Judge had omitted to tell the jury that either of the defendants might be found guilty, though the other was acquitted, and that on the contrary he had told the jury that, unless there was a combination and a Conspiracy between the defendants to do the acts complained of, they ought to find for the defendants. When the motion was heard, the Judge admitted that it would not have been correct to say that upon the record in the case a verdict could by no possibility have been found against one of the defendants only, but he considered himself warranted to do as he had done in consequence of the plaintiff's counsel having practically elected to deal with the action as one of Conspiracy. And this view was upheld by the Court.

1851. *R.* v. *Rowlands.* Trade Union case. Indictment for Conspiracy. There was a strike to obtain a list of prices. The charges laid were of conspiring to molest and obstruct within the meaning of the Statute 6 G. iv. c. 129, but there were also other counts framed exclusively upon the Common Law of Conspiracy—practically Conspiracy to injure. For particulars as to these Common Law Counts see Wright on Criminal Conspiracies, p. 60. As an example, the 19th Count was in these words:

Unlawfully to intimidate prejudice and oppress R. P. and G. P. in their trade and occupation of manufacturers of, &c., and to entice and seduce away the workmen of R. P. and G. P. from the employment of R.P. and G.P. and thereby to injure and oppress R.P. and G.P. in their said trade and occupation.

In charging the jury the Judge (Erle J.) observed (*a.*):

"Workmen have a right to combine for their own protection and to obtain such wages as they chose to demand . . . But I consider the law to be clear, so far only as while the purpose of the combination is to obtain a benefit for the parties who combine . . . a benefit which by law they can claim. I make that remark because a combination for the purpose of injuring another is a combination of a different nature directed personally against the party to be injured; and the law allowing them to combine for the purpose of obtaining a lawful benefit to themselves gives no sanction to combinations which have for their immediate purpose the hurt of another. But supposing you should . . . be of opinion that a combination existed for the purpose of obstructing the prosecutors in carrying on their business and forcing them to consent to the book of prices, and in pursuance of that concert they persuaded the free men and gave money to the free men to leave the employ of the prosecutors, the purpose being to obstruct them in the manufactory and to injure them in their business, and so force their consent, with no other result, to the parties combining than gratifying ill-will, that would be a violation of the law." (17, Q.B. (A & E) 686.)

The Jury convicted and the case came up before the Queen's Bench on the question whether they had been misdirected by the Judge. The objection taken by the counsel for the defendants was that the Judge had told the Jury—at least was understood to have done so—that they ought to convict if they found that the *effect* of the defendants' acts had been to injure the business of the plaintiffs. But this the Judge disclaimed. The Court however, was inclined to consider the Common Law Counts 16, 17 and 19 too vague. Without expressing any opinion on their validity, they intimated that they thought there was sufficient doubt to induce the Court to grant a rule *nisi*, but suggested to the counsel for the Crown whether under the circumstances it would not be better to enter a *nolle prosequi* as to these three counts. The counsel for the Crown assented, and a *nolle prosequi* was entered accordingly.

1853. *Lumley* v. *Gye.* Declaration alleged inducement of breach of contract done maliciously and with intent to injure; decided on demurrer. The defendant had induced a singer to break her contract with the plaintiff. Decision in favour of plaintiff, Coleridge J., *dissentiente.* The Judges forming the majority were Crompton, Erle and Wightman, J.J.

Crompton J. founded his decision upon what he considered undoubted law, that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupted the relation between master and servant by procuring the servant to depart from the master's service, or by harbouring or keeping him as a servant after he has quitted it, and during the period stipulated for as the period of service whereby the master is injured commits a wrongful act: and in his opinion the principle extended to any contract of personal service. But he added (*b.*):—

"In deciding this case on the narrower ground I wish by no means to be considered as deciding that the larger ground taken by Mr. Cowling is not tenable, or as saying that in no case except that of master and servant is an action maintainable for maliciously inducing another to break a contract to the injury of the person with whom such contract has been made. . . . Suppose a trader with a malicious intent to ruin a rival trader goes to a banker or other party who owes money to his rival and begs him not to pay the money which he owes him, and by that means ruins or greatly prejudices the party: I am by no means prepared to say that an action could not be maintained and that damages beyond the amount of the debt if the injury were great or much less than such amount if the injury were less serious might not be recovered. Where two or more parties(*b*) were concerned in inflicting such injury, an indictment or writ of conspiracy at common law might perhaps have been maintainable, and where a writ of conspiracy would lie for an injury inflicted by two, an action on the case in the nature of conspiracy will generally lie; and in such action on the case the plaintiff is entitled to recover against the defendant without proof of any conspiracy, the malicious injury and not the conspiracy being the gist of the action."

Erle J. rested his decision on the ground that the procurement of a violation of right is a cause of action in all cases where the violation is an actionable wrong. Wightman J. his on the ground that an action on the case was maintainable for maliciously procuring a person to refuse to perform a contract. It was undoubtedly a *prima facie* unlawful act on the part of Miss Wagner to break her contract and, therefore, a tortious act of the defendant maliciously to procure her to do so.

1856. *Hilton* v. *Eckersley.* This was a suit to enforce a penalty against a member of a Masters' Association in the nature of a Trade Union, for breaking an agreement by which the members had bound themselves as to the conduct of their business. The agreement was held void as being in restraint of trade.

1861. *Walsby* v. *Anley.* Notification of Strike. The particulars of this case are given above, p. 91.

(*a*) This presumably was the passage referred to by Lord Macnaghten in *Quinn* v. *Leathem.*

(*b*) Is not this the passage referred to by Lord Watson in *Allen* v. *Flood* as the passage on which the judges in *Temperton* v. *Russell* might have relied as an authority recognising conspiracy to injure? *See*, however, Lord Macnaghten's remark in *Quinn* v. *Leathem.*

1866. *Wood* v. *Bowron.* Notification of Strike. Particulars of this case are given above, p. 91.

1870. *R.* v. *Warburton.* A fraudulent agreement by a member of a partnership with 3rd persons wrongfully to deprive his partner by false entries and false documents of all interest in some of the partnership property on the dissolution of the partnership was held a conspiracy, although the offence was completed before the passing of 31 and 32 Vic. c. 116 by which a partner can be criminally convicted for stealing partnership property.

Per Cockburn C. J. It is not necessary, in order to constitute a conspiracy that the acts agreed to be done should be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, that is, amount to a civil wrong.

1872. *R.* v. *Bunn.* Indictment of Trade-Unionists for Conspiracy to induce breach of Contract and to interfere with employer. The stokers of a Metropolitan Gas Company had suddenly struck, in breach of their contract and in disregard of the consequences to the public, with a view to bring about the reinstatement of a discharged workman. They had used no violence or threats of violence, but in proof of the use of other threats evidence was given that one of the strikers had told a workman that if he would not go with the rest he would be spotted. For the breach of contract the strikers would have been liable to a sentence of three months' imprisonment, if they had been civilly proceeded against under the then Master and Servants Act, 1867, and if the magistrate had considered that pecuniary compensation to the employer would not meet the case. The promoters of the strike were now indicted for a Criminal Conspiracy. The 1st count charged that intending to injure the company and to force the company to make alterations in the mode of conducting their business, they had to the damage of the company conspired by threats to extort from the superintendent against his will a promise to reinstate the discharged workman. The 3rd count was for a Conspiracy to break contracts. The Judge (Lord Esher) ruled that the 1st count was good at Common Law and was not affected by the proviso to Section 1 of the Criminal Law Amendment Act of 1871. That proviso had not relieved from the liability for Conspiracy except liability on the ground that the act the subject of the Conspiracy was to restrain the free course of trade. The present case was different: it was that of a combination to press the company to conduct the business of the company contrary to their own will by an improper threat and improper molestation, and he told the jury that at Common Law there is improper molestation, if there is anything done with an improper intent which the jury might think an annoyance or unjustifiable interference, and which in their judgment would have the effect of annoying or interfering with the minds of the persons carrying on such a business as this Gas Company was carrying on. As to the 3rd count for Conspiracy to break contracts, the Judge asked, "Did the Jury think that the prisoners did it with evil intent—that is, the "evil intent of forcing their masters to carry on their business in a way which they knew was contrary "to the will of their masters? If they did, they would say that the prisoners were guilty of a Conspiracy." The jury, however, acquitted on the 1st count, so that there was no opportunity to bring the Judge's ruling concerning it under review. They convicted of Conspiracy on the 3rd count, and the prisoners were sentenced to 12 months' imprisonment with hard labour—a punishment four times as heavy as the maximum they could have incurred if they had been proceeded against individually under the Master and Servant Act 1867. The Secretary of State, however, mitigated the sentence to a term of four months' imprisonment.

1881. *Bowen* v. *Hall.* Inducement of breach of contract. A trader had induced a workman to leave the service of another in breach of contract. No *personal* malice was alleged. Decision by Court of Appeal, Lord Selborne C. and Brett, L. J. in favour of plaintiff. The Court was bound by Lumley *v.* Gye to treat the inducement as actionable, but the force of that case had been much impaired on account of the doubt as to the ground on which it had been decided. They now interpreted Lumley *v.* Gye to have been based on the ground of malice on the part of the doer of the act, and they decided the case before them accordingly.

"Merely to persuade a person to break his contract may not be wrongful in law or fact as in the second case put by Coleridge, J. (2 E and B, p. 24). But if the persuasion be used for the indirect purpose of injuring the plaintiff or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act and therefore an actionable act if injury ensues from it. We think that it cannot be doubted that a malicious act such as is above described is a wrongful act in law and in fact."

1891. *Kearney* v. *Lloyd.* Action of Conspiracy to injure. This case was adjudicated between the last two stages of the Mogul Case, that is, after the decision in the Court of Appeal and before the decision of the House of Lords. It was not a case connected with Trade or Industry. The plaintiff had been the Protestant Incumbent of a parish in Ireland, and he now brought an action against the defendants and some others of his former parishioners for conspiring to injure him and deprive him of his incumbency by compelling his resignation, and to ruin him in his profession, the means used for this purpose being that they had abstained from giving contributions to the Sustentation Fund. The case for the plaintiff having closed, the Counsel for the defendants applied to the Judge (Andrews, J.) to direct that there was no evidence of Conspiracy to go to the Jury. The Judge declined, and put to the Jury these questions evidently framed after the suggestions of Lord Bowen in the Mogul Case:—

7. Did the defendants combine and agree together to abstain themselves from subscribing to the Susten tation Fund? *Answer:* Yes. 8. If so, was this done by them (*a*) solely with the intention of injuring the plaintiff? *Answer:* No. (*b*) or solely with the intention of obliging him to leave the parish? *Answer:* No. 9. If not so done, was it done solely with the intention of promoting the religious interests of the parish? *Answer:* No. 10. Or was it done partly with the intention of injuring the plaintiff or obliging him to leave the parish and partly with the intention of promoting the interests of the parish? *Answer:* Yes.

On these findings the Judge abstained from giving judgment on the cause of action for Conspiracy, and left the parties to move for such judgment as might be desired. The defendants having obtained a conditional order to enter judgment in their favour, the plaintiff showed cause before Palles, C.B.

The Chief Baron, in an elaborate judgment, decided against the plaintiff. He held that in cases o this description, in which the old writ of Conspiracy did not lie, the gist of the action is not the Conspiracy itself but the wrongful acts done in pursuance of it: that the cause of action must therefore exist, although the allegation of Conspiracy be struck out; and that the acquittal of all the defendants but one would not—as it would were the Conspiracy a material part of the action—prevent judgment against the remaining defendant if found guilty. The word "injury" as used in the findings of the Jury must, he held, be used in its strict legal sense as meaning the infringement of some legal right, and he cited *Rogers* v. *Rajendro Dutt.* Was there then any right vested in the plaintiff which would be invaded by subscriptions having been withheld and by his being obliged to resign?

In one sense he was obliged to resign, in another he was not. His income was so much reduced that he voluntarily resigned. It was his own act to which he was constrained no otherwise than by the reduction

of his income; and unless this reduction was as against him an actionable wrong, the voluntary resignation which resulted from it cannot be deemed an injury in law. Was then the reduction of his income in the mode in which it was effected an actionable wrong—an invasion of any legal right vested in him? Each subscriber was at perfect liberty to subscribe or not at his own volition. The plaintiff had no right to compel him to subscribe, and therefore the isolated act of one parishioner alone refraining from subscribing could not—irrespective of intention—amount to a legal injury to the plaintiff. Nor could it make any difference that the intention of that one parishioner in so refraining was to deprive the plaintiff of the means necessary to support his position as incumbent, or to annoy him or do him harm, using that word in the moral sense. Such intention, however, it may be regarded from a moral point of view, cannot amount to an intent to injure, because the act intended, if in fact accomplished, would not amount to an injury in the sense of an invasion of a legal right . . . If, then, each defendant acting separately and independently of his fellows refrained from subscribing in the same manner in all respects (other than in combination) in which he did here, and if the same result ensued, *i.e.*, that the plaintiff was obliged to resign, no legal right of the plaintiff would have been invaded.

The Judge then proceeded to consider whether the fact of these acts of the defendants having been done in pre-concert would constitute a Criminal Conspiracy.

That a Conspiracy to do an act neither criminal nor immoral nor contrary to public policy nor amounting to a civil wrong against an individual can be the subject of an action or indictment is clear and satisfactory authority that I am aware of exists. No doubt there are some vague passages in the text books and some *obiter dicta* of Judges—*e.g.* that of Lord Camden in the Cambridgeshire Tailors Case (8 Mod. R. 11) and that of Grose, J., in *Reg.* v. *Mawbey*, 6 T. R., 619—which might be cited to that effect. These cases may possibly be supported on doctrines which at the time they were decided were applicable to Contracts in restraint of Trade. Unless, however, they be so (and it is unnecessary to determine whether they be or not) I am unable to agree with them, and feel coerced to hold that the weight of authority is entirely the other way.

The Chief Baron, however, guarded himself thus:

I desire, however, to observe that the doctrine in reference to contracts in restraint of Trade may prevent the reasoning in this judgment having any bearing upon combinations which may be obnoxious for that reason. In the Mogul Case, Lord Coleridge (21 Q.B.D., 544) and each of the Judges in the Court of Appeal, 23 Q.B.D., 598, seem to have thought the actual intention of the defendants to be material, and certainly each of the judgments is based upon the fact that there the intention of the parties was to protect their own interests . . . I confine my judgment to this particular case in which no question as to restraint of Trade arises, and I am of opinion that for the reasons stated the acts of the defendants did not constitute a legal injury to the plaintiff, and that the Jury ought to have been directed to find for the defendants upon the cause of action in question.

1891. *Salaman* v. *Warner*. Action of Conspiracy. According to the claim of the plaintiff, the defendants, promoters of a Company, had conspired to make fraudulent representations to the Directors by which the bulk of the shares were allotted to the defendants, instead of to the public as the Directors were induced to believe, and also had conspired by false representations to obtain a settling day from the Committee of the Stock Exchange—the object being to get control of the market in the shares, and cause a belief that allotments had been *bonâ fide* made to the public, and so to induce the public to make contracts for selling such shares and to compel members of the public, who had made such contracts for sale and delivery, to purchase shares from the defendants at an enhanced price. The plaintiff, as one of the public, had made such a contract, and now claimed damages as having suffered loss from the Conspiracy. The claim was dismissed. The interest of the case lies in the observation of the Judges:—

Day, J.:

I at once, speaking for myself, disavow the term Conspiracy as having any legal efficacy on the civil side of our Courts. The term Conspiracy is a well-understood term on the Crown side, but there is no remedy that I am aware of obtainable on the civil side in respect of Conspirators other than that which you can obtain against each individual member of the Conspiracy. It must be shown here not that there is a Conspiracy or a combination, but it must be shown by the plaintiff that the defendants—whether one of them or two of them, or more than two of them, whether in combination or not, is utterly immaterial—have infringed some legal right which he had.

Lord Esher:

It is not true to say that a civil action could be brought for a Conspiracy. If persons conspired to do an illegal act or to do a legal thing in an illegal way they are liable to an indictment and not to an action. They are only liable to an action if they conspired to do something against the rights of the plaintiffs and have effected their purpose and committed a breach of those rights. The plaintiff therefore must show that the Conspiracy was to injure those rights and that those rights had been injured. He has in fact to carry his case as far as if there had been no Conspiracy at all. The fact of there having been a conspiracy did not increase his right of action in the least, though it did not diminish it.

Fry, J.:

I propose to say nothing upon the question as to whether an action will lie for injury resulting to the plaintiff from an act done by several persons, assuming that that act could have been lawful if done by one, but is unlawful if done by several as the result of a combination between them.

1891. *Peto* v. *Apperley* was an action for alleged inducement of workmen not to enter into the service of the plaintiffs. The plaintiffs applied for an injunction to discontinue the posting of a placard outside the works of a builder, and the circulation of bills by a Trade Union Committee desiring carpenters and joiners to keep away from Cane Hill Asylum pending the settlement of the London strike. Mr. Justice Jeune refused the injunction. No threats or intimidation, he said, had been used within the meaning of the Act of 1875, and there had been no inducement to commit an illegal act. What had been done was in furtherance of the objects of a Trade Union and was not illegal. Anything done in pursuance of those objects was done with just cause or excuse as required by the Mogul Case.

1891. *Curran* v. *Treleaven*. Prosecution for Intimidation. The particulars of this case are given above, p. 92

1891. *Haile* v. *Lillingstone* was a similar case, but far stronger. It was a motion for an injunction to restrain the defendants (officers of a Trade Union) from printing, &c., any bill which appealed to the public, Trade Unionists, or any persons to refuse their custom or boycott the plaintiff, or requested the public, Trade Unionists, or any other person to do any act injurious to the plaintiff in his trade or profession. The following were the terms of the Bill issued—

Boycott the Sweater. An appeal to the Public and Trade Unionists. Patronize those shops who close at 5.0 on Thursdays. We, the undersigned, shop assistants of this district, appeal to you, whose servants we are, to refuse your custom and boycott Haile, Cheesemonger, 288, Harrow Road, the blackleg tradesman who has acted the part of Pecksniff right through the agitation, &c.

Mr. Justice Jeune declined to grant the injunction, on the ground that after the Plymouth case, *Curran* v. *Treleaven*, it could not be said that there had been done any acts amounting to intimidation.

1891. *Mogul Steamship Co.* v. *McGregor, Gow & Co.* Commenced in 1885 but not adjudicated by the House of Lords until 1891. Action for conspiracy by a Trading Company against an Association of rival traders for combining to interfere with the tea-carrying business of the plaintiffs in order to oust them from the Chinese market. The acts of interference were not in themselves criminal or wrongful

but were done in pursuance of an agreement—which, being in restraint of trade, was unlawful in the sense of being unenforceable—to offer rebates to customers conditional on their dealing exclusively with the defendants' Association, and to put in operation other similar devices of competition. There was no personal spite on the part of the defendants towards the plaintiffs, beyond that they meant to wage the war of competition to the bitter end. The Conspiracy alleged in the Statement of Claim to have caused damage to the plaintiffs was particularised as a combination; (1) to prevent the plaintiffs from obtaining cargoes; and (2) to bribe, coerce and induce skippers to agree to forbear from shipping cargoes by the plaintiffs' steamers: and (in the alternative) as a combination—with a view of injuring the plaintiffs and preventing them from obtaining cargoes—(1) to refuse to accept cargoes from shippers except upon the terms that the shippers should not ship cargoes by the steamers of the plaintiffs; and (2) by threats of stopping the shipment of homeward cargoes altogether, to prevent shippers from shipping cargoes by the plaintiffs' steamer. The case was admitted to be of a novel character. The Queen's Bench Division (Lord Coleridge, C.J., and Fry, L.J.) refused to grant an interlocutory injunction, but in delivering judgment Lord Coleridge said that neither he nor Lord Justice Fry entertained any doubt that if such a Conspiracy as alleged was proved in point of fact, and the intuitus of the conspirators were made out to be not the mere honest support and maintenance of the defendants' trade, but the destruction of the plaintiffs' trade and their consequent ruin as merchants, it would be an offence for which an indictment for Conspiracy, and if an indictment then an action for Conspiracy, would lie. Subsequently, at the hearing of the case, Lord Coleridge referred to various authorities, amongst others to *Bowen* v. *Hall*, as binding upon the Court: he admitted that in order to found the action there must be an element of unlawfulness in the combination: and also that if the motive of the acts done had been to ruin the plaintiffs it would render the combination itself wrongful and malicious, and that if damage had resulted an action would lie. It was too late, he said, to dispute, if he desired it, which he did not, that a wrongful and malicious combination to ruin a man in his trade might be ground for such an action as this. But he came to the conclusion that the combination was not wrongful or malicious and that the defendants were not guilty of a misdemeanour. The acts done in pursuance of the combination was not unlawful, not wrongful, not malicious.

The case was elaborately argued in the Court of Appeal: Lord Esher pronounced for the plaintiffs Lord Bowen and Fry, L.J., for the defendants.

On the question of what interference with an independent trader would be a violation of his private right, Lord Esher thus formulated his conclusions:—

1. That the head of law which we are considering applies only to trade and traders. 2. That the law has a peculiar care for the preservation of a free course of trade as between traders, because such freedom is for the benefit of the public. 3. That the principal formula of law for the purpose of enforcing this peculiar care is—every trader has a legal right to a free course of trade, meaning thereby a legal right to be left free to exercise his trade according to his own will and judgment. 4. That if anyone by an act wrongful as against that right interferes with it to the injury of a trader, an action lies against such person by such trader. 5. That any act of fair trade competition though it injures a rival trader even to the destruction of his trade is not a wrongful act as against such trader's right, but is only the exercise of the first-mentioned trader's equal right, and is therefore not actionable. 6. That any act though of the nature of competition in trade, but which is an act beyond the limits of fair trade competition, and which is therefore not an act of any real course of trade at all, and the immediate and necessary effect of which is such an interference with the rival trader's right to a free course of trade as prevents him from exercising his full right to a free course of trade, leads to an almost irresistible inference of an indirect motive, and is therefore—unless, as may be possible, the motive is negatived—a wrongful act as against his right, and is actionable if injury ensue. 7. That an act of competition, otherwise unobjectionable, done not for the purpose of competition, but with intent to injure a rival trader in his trade, is not done in an ordinary course of trade, and is therefore actionable if injury ensue. 8. An agreement among two or more traders who are not and do not intend to be partners, but where each is to carry on his trade according to his own will except as regards the agreed act, that agreed act being one to be done for the purpose of interfering, *i.e.*, with intent to interfere with the trade of another, is a thing done not in the due course of trade, and is therefore an act wrongful against that other trader, and is also wrongful against the right of the public to have free competition among traders, and is therefore a wrongful act against such trader, and if it is carried out and injury ensue, is actionable. 9. Such an agreement being a public wrong is also of itself an illegal conspiracy and is indictable.

It followed that in the present case the agreement of 1885 was within the Rules 8 and 9 an indictable Conspiracy, and that when it was carried out to its immediate and intended effect, which was an injury to the plaintiffs' right to a free course of trade, the plaintiffs had a good cause of action against the defendants.

With respect to *Bowen* v. *Hall* he said, "The law there is laid down that a malicious motive in the defendant may make an act which would not be wrongful without the malice, a wrongful act when done with malice."

"It follows that the act of the defendants in lowering their freights far beyond a lowering for any purpose of trade—that is to say, so low that if they continued it, they themselves could not carry on trade—was not an act done in the exercise of their own free right of trade, but was an act done evidently for the purpose of interfering with, *i.e.*, with intent to interfere with the plaintiffs' right to a free course of trade, and was therefore a wrongful act against the plaintiffs' right; and, as injury ensued to the plaintiffs, they had also in respect of such act a right of action against the defendants. The plaintiffs in respect of that act would have had a right of action if it had been done by one defendant only. They have it still more clearly when that act was done by several defendants combined for that purpose."

Lord Bowen and Day, L.J., dissented from the view that a combination in restraint of trade was an indictable Conspiracy; and whilst accepting the authority of *Bowen* v. *Hall*, held that the case before them was not a case of malice but of simple competition.

Lord Justice Bowen, after stating that the real question to be decided was whether the defendants in the conduct of their affairs had done anything which is unjustifiable at law, first considered the case of what was forbidden to an individual, and on this he said:

"Intentionally to do that which is calculated in the ordinary course of events to damage, and which does in effect damage another in that other person's property or trade is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls a malicious wrong (see *Bromage* v. *Prosser*, 4 B. and C. 247; *Capital and Counties Bank* v. *Henty* per *Lord Blackburn*). The acts of the defendants which are complained of here were intentional and were also calculated, no doubt, to do the plaintiffs damage in their trade. But in order to see whether they were wrongful we have still to discuss the question whether they were done without any just cause or excuse."

He then referred to *Gregory* v. *Duke of Brunswick*, *Keeble* v. *Hickeringill*, *Bowen* v. *Hall* and *Lumley* v. *Gye* and other cases, as instances where forbidden acts had been done.

"But the defendants have been guilty of none of these acts. They have done nothing more against the plaintiffs than pursue to the bitter end a war of competition waged in the interest of their own trade. To the argument that a competition so pursued ceases to have a just cause or excuse when there is ill-will or a personal intention to harm, it is sufficient to reply that there was here no personal intention to do any other or greater harm to the plaintiffs than such as was necessarily involved in the desire to attract to the defendants' ships the entire tea-freights of the port, a portion of which would otherwise have fallen to the plaintiffs' share. I can find no authority

for the doctrine that such a commercial motive deprives of just cause or excuse acts done in the course of trade which would, but for such a motive, be justifiable."

Nor was there authority for holding that there is some natural standard of fairness or reasonableness (to be determined by the internal consciousness of judges and juries) beyond which competition ought not in law to go.

"A man is bound not to use his property so as to infringe upon another's right. But there is surely no doctrine of law which compels him to use his property in a way that judges and juries may think reasonable (see *Chasemore* v. *Richards*, H.L.C. 349). If there is no such fetter upon the use of property known to the English law, why should there be any such a fetter upon trade?"

His Lordship then addressed himself to the argument that even if the acts complained of would not be wrongful had they been committed by a single individual, they become actionable when they are the result of concerted action amongst several; he admitted that there might be such a Conspiracy. But in the application of this undoubted proposition it was necessary to be very careful not to press the doctrine of illegal Conspiracy beyond that which is necessary for the protection of individuals and the public. But he proceeded to say the definition of an illegal combination is an agreement by one or more to do an unlawful act or to do a lawful act by unlawful means. Had the defendants combined to do an unlawful act? Had they combined to do a lawful act by unlawful means?

"The unlawful act agreed to, if any, between the defendants must have been the intentional doing of some act to the detriment of the plaintiff's business without just cause or excuse. Whether there was any such justification or excuse for the defendants is the old question over again which, so far as regards an individual trader, has been already solved. The only differentia that can exist must arise, if at all, out of the fact that the acts done are the joint acts of several capitalists and not of one capitalist alone.... But I find it impossible myself to acquiesce in the view that the English law places any such restriction on the combination of capital as would be involved in the recognition of such a distinction. . . . The truth is that combination of capital for purposes of trade and competition is a very different thing from such a combination of several persons against one with a view to harm him as falls under the head of an indictable conspiracy. There is no just cause or excuse in the latter class of cases. There is such a just cause or excuse in the former. There are cases in which the very fact of a combination is evidence of a design to do that which is hurtful without just cause is evidence, to use a technical expression, of malice. But it is perfectly legitimate, as it seems to me, to combine capital for all the mere purposes of trade for which capital may, apart from combination, be used in trade."

Finally his Lordship says:

"In cases like these where the element of intimdation, molestation, or the other kinds of illegality to which I have alluded are not present, the question must be decided by the application of the test I have indicated. Assume that what is done is intentional and that it is calculated to do harm to others. Then comes the question: 'Was it done with or without just cause or excuse?' If it was *bona fide* done in the use of a man's own property, in the exercise of a man's own trade, such legal justification would, I think, exist not the less because what was done might seem to others to be selfish or unreasonable (*see* the summing up of Erle J. and the judgment of the Queen's Bench in *R.* v. *Roulands*). But such legal justification would not exist when the act was merely done with the intention of causing temporal harm without reference to one's own lawful gain or the lawful enjoyment of one's own rights. The good sense of the tribunal which had to decide would have to analyse the circumstances and to discover on which side of the line each case fell."

Fry, L.J., pointed out that competition pure and simple was in substance the only weapon which the defendants used against their rivals in trade. No thought of using violence, molestation, intimidation, fraud or misrepresentation was entertained by the defendants.

"It is not necessary to consider whether competition directed by one man or by a combination of men against another man, if instigated and put in motion from mere malice and ill-will towards him, as a means of doing him ill service and for no benefit to the doer, would or would not be unlawful or actionable. There is in the present case no evidence of any express malice or of any activity of the defendants against the plaintiffs except as rival or competing shipowners. The defendants did not aim at any general injury to the plaintiffs' trade or any reduction of them to poverty or insolvency: they only desired to drive them away from particular ports where the defendants conceived that the plaintiffs' presence interfered with their own gain. The damage to be inflicted on the plaintiffs was to be strictly limited by the gain which the defendants desired to win for themselves . . . I will only add in this part of the case that the charge of Erle, J., in *R.* v. *Rowlands*, draws the same distinction which I have taken between combinations to promote the interests of those who combine and combinations of which the hurt of another is the immediate purpose. We have then to inquire whether mere competition directed by one man against another is ever unlawful. It was argued that the plaintiffs have a legal right to carry on their trade and that to deprive them of that right by any means is a wrong. But the right of the plaintiffs to trade is not an absolute but a qualified right—a right conditioned by the like right in the defendants and all Her Majesty's subjects, and a right therefore to trade subject to competition. Now I know no limits to the right of competition in the defendants—I mean no limits in law. I am not speaking of morals or good manners. To draw a line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the Courts. Competition exists when two or more persons seek to possess or enjoy the same thing: it follows that the success of one must be the failure of another, and no principle of law enables us to interfere with or to moderate that success or that failure so long as it is due to mere competition."

The House of Lords unanimously dismissed the appeal, on the ground that the acts of the defendants were not unlawful or malicious but were done in course of competition. They negatived Lord Esher's view that a combination in restraint of trade was a misdemeanour. Several of their Lordships expressed approval of Lord Bowen's judgment in the Court of Appeal. The most important passages in the Lord Chancellor's judgment appear to be the following.

P. 36. Upon a review of the facts it is impossible to suggest any malicious intention to injure rival traders except in the sense that in proportion as one withdraws trade that other people might get you to that extent injure a person's trade when you appropriate the trade to yourself. If such an injury and the motive of its infliction is examined and tested upon principle and can be truly asserted to be a malicious motive within the meaning of the law that prohibits malicious injury to other people, all competition must be malicious and consequently unlawful, a sufficient *reductio ad absurdum* to dispose of that head of suggested unlawfulness.

P. 38. I think this question is first to be determined: What injury, if any, has been done? What legal right has been interfered with? Because if no legal right has been interfered with and no legal injury inflicted, it is vain to say that the thing might have been done by an individual, but cannot be done by a combination of persons. My Lords, I do not deny that there are many things which might be perfectly lawfully done by an individual, which when done by a number of persons become unlawful. I am unable to concur with the Lord Chief Justice's criticism (21 Q.B.D. 551)—if its meaning was rightly interpreted, which I very much doubt—on the observations made by my noble and learned friend Lord Bramwell in *Reg* v. *Druitt* (10 Cox C.C. 592), if that was intended to treat as doubtful the proposition that a combination to insult and annoy a person would be an indictable conspiracy. I should have thought it as beyond doubt or question that such a combination would be an indictable misdemeanour, and I cannot think the Lord Chief Justice meant to throw any doubt upon such a proposition. But in this case the thing done, the trading by a number of persons together, affects no more and is no more, so to speak, a combined operation than that of a single person.

Lord Watson observed:

As the law is now settled, I apprehend that in order to substantiate this claim the Appellants must show either that the object of the agreement was unlawful, or that illegal methods were resorted to in its prosecution If neither the end contemplated by the agreement nor the means used for its attainment were contrary to law the loss suffered by the appellants was *damnum sine injuria*.

P. 42. I venture to think that the decision of this appeal depends upon more tangible considerations than any which could be derived from the study of what is generally known as public policy. There is nothing in the evidence to suggest that the parties to the agreement had any other object in view than that of defending their carrying trade during the tea season against the encroachments of the appellants and other competitors and of attracting to themselves custom which might otherwise have been carried off by these competitors. That is an object which is strenuously pursued by merchants great and small in every branch of commerce; and it is in the eye of the law perfectly legitimate. If the respondents' combination had been formed not with a single view to the extension of their business and the increase of its profits, but with the main or ulterior design of effecting an unlawful object, a very different question would have arisen for the consideration of your Lordships. But no such case is presented by the facts disclosed by this appeal. The object of the combination being legal, was any illegal act committed by the respondents in giving effect to it?

Lord Bramwell:

P. 46. It is to be remembered that it is for the plaintiffs to make out the case that the defendants have committed an indictable offence.

Lord Morris:

P. 30. What one trader may do in respect of competition a body or set of traders can lawfully do: otherwise a large capitalist could do what a number of small capitalists combining together could not do, and thus a blow would be struck at the very principle of co-operation and joint stock enterprise.

Lord Field:

P. 52. It is undoubted law not only that it is not every act causing damage to another in his trade nor even every intentional act of such damage which is actionable, but also that acts done by a trader in the lawful way of his business, although, by the necessary results of effective competition, interfering injuriously with the trade of another, are not the subject of any action. Of course it is otherwise, as pointed out by Lord Holt (*Keeble* v. *Hickeringill*, 11 Mod. 74, 131), if the acts complained of, although done in the way and under the guise of competition or other lawful right, are in themselves violent or purely malicious, or have for their ultimate object injury to another from ill-will to him and not the pursuit of lawful rights. No doubt also there have been cases in which agreements to do acts injurious to others have been held to be indictable as amounting to Conspiracy, the ultimate object or the means being unlawful, although if done by an individual no such consequences would have followed. But I think that in all such cases it will be found that there existed either an ultimate object of malice or wrong or wrongful means of execution involving elements of injury to the public, or at least negativing the pursuit of a lawful object.

P. 54. The grounds upon which this refusal was based by the respondents were purely of a commercial and in no way of a personal character. . . . It is absolutely unnecessary to consider whether these grounds were morally or commercially justifiable.

P. 56. Everything that was done by the respondents was done in the exercise of their right to carry on their own trade and was *bona fide* so done. There was not only no malice or indirect object in fact, but the existence of the right to exercise a lawful employment in the pursuance of which the respondents acted negatives the presumption of malice, which arises when the purposed infliction of loss and injury upon another cannot be attributed to any legitimate cause and is therefore presumably due to nothing but its obvious object of harm. All the acts complained of were in themselves lawful, and if they caused loss to the appellants, that was one of the necessary results of competition.

Lord Hannen:

P. 59. I arrive at the conclusion therefore that the objects sought and the means used by the defendants did not exceed the limits of allowable trade competition, and I know of no restriction imposed by law on competition by one trader with another, with the sole object of benefiting himself. I consider that a different case would have arisen if the evidence had shown that the object of the defendants was a malicious one, viz., to injure the plaintiffs whether they the defendants should be benefited or not. This is a question on which it is unnecessary to express an opinion, as it appears to be clear that the defendants had no malicious or sinister intent as against the plaintiffs and that the sole motive of their conduct was to secure certain advantages for themselves.

It only remains for me to refer to the argument that an act which might be lawful for one to do becomes criminal or the subject of civil action by any one injured by it, if done by several combining together. On this point, I think, the law is accurately stated by Sir William Erle in his treatise on the law relating to Trade Unions. The principle he lays down is equally applicable to combinations other than those of Trade Unions. He says (page 23), "As to combination, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and terms which one person may exercise and declare singly, many after consultation may exercise jointly, and they may make a simultaneous declaration of their choice and may lawfully act thereon for the immediate purpose of obtaining the required terms, but they cannot create any mutual obligation having the legal effect of binding each other not to work or not to employ unless upon terms allowed by the combination." In considering the question, however, of what was the motive of the combination, whether it was for the purpose of injuring others or merely in order to benefit those combining, the fact of several agreeing to a common course of action may be important. There are some forms of injury which can only be effected by the combination of many. Thus if many persons agree not to deal at all with a particular individual, as this could not under ordinary circumstances benefit the persons so agreeing, it might well lead to the conclusion that their real object was to injure the individual.

1892. *Jenkinson* v. *Nield*. This was an action of Conspiracy against a Trade Union of employers for circulating black lists, with a view to induce other employers not to employ certain journeymen, of whom plaintiff was one. The Master Tailors of Sheffield had agreed together to pledge themselves not to employ members of the Amalgamated Society of Journeymen Tailors until they should accede to the terms desired by their masters, and had circulated amongst the members of the Sheffield branch a black list of names of operative tailors in Sheffield (including the name of the plaintiff), asking the Master Tailors of Great Britain not to employ any of the men who were locked out in connection with a dispute which had resulted in a strike. The plaintiff sued the President of the Sheffield Branch of Masters and apparently others in the County Court, but that tribunal decided against him. He then appealed to the Queen's BenchDivision, and the case was heard before Mathew and A. L. Smith, J.J. They dismissed the Appeal. The principle, they held, of the Mogul Case was to be applied. There was no evidence that the defendants were actuated by any other motive than self-interest. If that was so, and they were not desirous of injuring the plaintiff, what they did was not actionable.

1893. *Temperton* v. *Russell*. There was a strike against a builder A; then, in order to bring further pressure on A, the defendants, the Executive of three Trade Unions, organised a secondary strike against B, who supplied A with materials, and that failing, in order to put further pressure on B and through B on A, they ordered, or threatened to order, another strike against C and others who bought their materials from B. C was under a contract to take certain materials from B, but under fear of the strike broke his contract. B then sued the Trade Union officials. The case came first before Henn. Collins, J., and a Jury. The Judge put to the Jury the following questions:—

1. Did the defendants or any of them maliciously induce the persons named or any of them to break their contract with the plaintiff?

2. Did the defendants or any two or more of them maliciously conspire to induce the person named and others not to enter into contracts with the plaintiff, and were such persons thereby induced not to make such contracts?

and he directed them, much as Lord Bowen had suggested in the Mogul Case, that to induce a person who had made a contract with another to break it in order to hurt the person with whom it had been made, to hamper him in his trade, or to put undue pressure upon him or to obtain an indirect advantage was, in point of law, to do it maliciously; and that if the Jury was satisfied that the defendants or any of them had induced persons to break contracts with the plaintiff, of the existence of which they were aware, and if their object in doing so was to injure the plaintiff in his trade in order to compel him to do something which he did not want to do, that would be "maliciously" in point of law, and a cause of action would be established. He also directed the Jury in substance that a malicious conspiracy to prevent persons from entering into contracts with another, if followed by damage to the persons conspired against, was actionable.

The Jury found for the plaintiff on both heads. The defendants then moved for judgment or a new trial, on the ground of misdirection and that there was no evidence to go to the Jury. The question was thus raised whether upon these findings of the Jury it was shown that the defendants had committed an actionable wrong. The case came on before Brett, Lopes, and A. L. Smith, L.J.J. in the Court of Appeal. Brett, L.J., treated the proceedings of the Unions as a systematic coercion of an illegal character:—

"The Joint Committee (of the Trade Unions) in effect said that if any person connected with the building trade in Hull should deal with the plaintiff for materials, the members of the Unions should refuse to work for that person upon goods supplied by the plaintiff. They thus intended to coerce the plaintiff to comply with their views; and they contemplated that if he did not submit his buisness would be destroyed. . . . They were not, I think, actuated in this proceeding by spite or malice, against the plaintiff personally, in the sense that their motive was the desire to injure him; but they desired to injure him in his business, in order to force him not to do what he had a perfect right to do."

Lord Justice Brett thereupon decided both questions against the defendants, the first (as to inducing breach of contract) on the ground of "malicious damage," as described in *Bowen* v. *Hall*, which he recognised as an authority binding on the Court. As to the second question, which related to conspiring to induce persons not to contract, he was prepared to hold that it fell under the same principle as inducing persons to break contracts, viz., the principle of "malicious damage"; but he actually decided it on the ground that it was a Conspiracy to Injure, by which is meant a combination to do something which is neither wrongful nor criminal, but harmful and malicious. And he referred to the case of *Gregory* v. *Duke of Brunswick*. The other two Judges, Lopes and A. L. Smith, L.J.J., concurred in substance with what Brett, L.J., had actually decided. *Kearney* v. *Lloyd* was not cited, nor was any reference made to the third section of the Conspiracy, etc., Act of 1875 as possibly affecting actions for Conspiracy.

1895. *Trollope* v. *London Building Trade Federation*. A Trade Union Strike case. A dispute had arisen with reference to an alleged preferential treatment of non-Union men by the plaintiff, a master builder. A strike took place, and the officials of the Union published a large yellow poster with black border, headed, "Trollope's Black List," and containing the names and addresses of non-Unionist workmen employed by the plaintiff and also of men who remained in when the strike took place. The plaintiff filed his Bill in Chancery and applied for an interlocutory injunction. Kekewich, J., granted this, on the ground that the publication was a purely mischievous act within the lines laid down by Lord Field in the Mogul Case, 1892 A.C., 512. The Court of Appeal (Lord Halsbury and Lindley and A. L. Smith, L.J.J.) affirmed the decision of the Court below; but the Lord Chancellor in delivering the judgment of the Court, guarded himself against expressing any opinion upon the very serious questions which would arise at a later stage. In the course of the argument respecting the acts of the defendants The Lord Chancellor made the observation, "If you want to forward your own ends by destroying the rights of others, that is express malice."

At the trial the Federation did not appear and the other defendants admitted the publication of the black list, but pleaded that its publication was justified by the law, that every statement in it was true and that they had acted without malice and in the interest of the Association. The Jury negatived this and found that it was published to injure Mr. Trollope. Judgment was given for £500 damages and the injunction was made perpetual.

1897. *Allen* v. *Flood* commenced in 1894 under the name of *Flood* v. *Jackson* and was finally adjudicated as *Allen* v. *Flood* by the House of Lords. A large number of boiler-makers who had a Trade Union of their own were working on iron on board a ship belonging to the Glengall Iron Company and were dissatisfied with the presence of two members of the Shipwrights' Union (Flood and Taylor) working with them on woodwork in the same ship, because they had a short time before worked on iron-work for another firm. The defendant Allen, delegate of the Boiler-makers' Union, was sent for: according to his own account he had no authority from his society to order a strike without their express sanction: but in a conversation he told the foreman of the ship that he (the foreman) had no option: that unless the two shipwrights were discharged all the iron-men would be called out, or "knock off" (which of these phrases he used is not quite clear): that the two shipwrights were known and, whatever yard they went to, the boiler-makers would be called out: the two shipwrights would not be allowed to work anywhere in London now The company yielded: the two shipwrights were discharged and then brought their action (*Flood* v. *Jackson*) against Allen and the President and Secretary of the Boiler-makers' Union. The action originally was against the defendants for individually inducing and also for conspiring together to induce the company (*a*) to discharge the plaintiffs and (*b*) not to engage them. At the trial the judge ruled that there was no evidence against the defendants other than Allen. The case, therefore, ceased to be one of Conspiracy, The judge also ruled that there was no evidence of breach of contract. The action thus was reduced to an action of tort against Allen as an individual for having induced the company to discharge and not to engage the plaintiffs, and with respect to this the judge further ruled that there was no evidence of intimidation or coercion, or any personal ill-will on the part of Allen.

The material questions put to the Jury—so far as they concerned Allen—and their answers were:—

1. Did the defendant Allen maliciously induce the Glengall Iron Company to discharge the plaintiffs or either of them from their employment? *Answer:* Yes.

2. Did the defendant Allen maliciously induce the Glengall Iron Company not to engage the plaintiffs or either of them? *Answer:* Yes.

Before they gave their answers the Judge had directed them in effect to apply the test suggested by Lord Bowen in the Mogul case with a view to ascertain whether the defendants had "just cause or excuse" for doing what they did. He said:—

"The question that I want you to answer is that if you find he (the defendant) induced the Glengall Iron Company by the threat, which is suggested by the plaintiffs, of calling out all the men on strike, and he continued (*quaere* of continuing) in that course of conduct if there was any attempt to employ them again, did he do that with the malicious intention which I have endeavoured to explain, that is merely, not for the purpose of forwarding that which he believed to be his interest as a delegate of his Union in the fair consideration of that interest, but for the purpose of injuring these plaintiffs and preventing them doing that which they were each of them entitled to do?"

Upon the findings of the Jury the Judge reserved the case for future consideration, and had it argued before him. The Judge then held the Jury to have found the defendant to have been actuated by a motive to injure the plaintiff, but his difficulty, as he reports, was that the case was a novel one, being that of an inducement by an individual of persons not to contract: that is, neither an inducement by an individual or persons to break contract so as to fall within *Bowen* v. *Hall*, nor an inducement by a combination of persons not to contract so as to be within *Temperton* v. *Russell*. However, as in *Temperton* v. *Russell* Brett, L.J., had expressed his opinion that in point of "malicious damage" inducing to break contracts and inducing not to make contracts were alike, Mr. Justice Kennedy gave judgment against Allen. The defendant Allen appealed contending that the judgment ought to be entered in his favour, on the ground that the findings of the Jury when rightly determined did not disclose any cause of action against him. The Court of Appeal affirmed the decision of Mr. Justice Kennedy, holding that Allen's conduct amounted to "malicious damage;" Lord Esher observing:—

It is said that he (Allen) did not induce anybody to break any contract. Now it is clear that merely to persuade a person, who has contracted, to break a contract, gives no cause of action at all. But if it is done maliciously for the purpose of injuring the person to whom the advice is given, or for the purpose of injuring some one else, the person against whom the malice is directed and carried out has a cause of action—not on the ground of persuasion to break the contract, but on account of the malice directed against him. To my mind the result is the same whether the persuasion is to break a contract or not to make a contract. . . . The malice makes that unlawful which would otherwise be lawful."

Lopes, L.J., concurred. Rigby, L.J., considered he was bound by the authority of *Temperton* v *Russell*.

The case then came up to the House of Lords who held that the finding of the Jury when rightly determined did not disclose any cause of action against the defendant. There was, however, great difference of opinion in the House of Lords. The case was twice argued, and on the second occasion the Judges were called in, the reference to them being "Assuming the evidence given by the plaintiffs' witnesses to be correct, was there any evidence of a cause of action fit to be left to a jury?" This form of reference left the judges free to form their own opinion of the evidence and to disregard the ruling of the judge who tried the case that there was no evidence of intimidation, coercion, or personal ill-will. Mr. Justice Hawkins and all the judges except two pronounced against the defendant, and on two grounds viz., (*a*) that the defendant had done an act of damage with a bad motive which was established to be a good cause of action by *Bowen* v. *Hall*; (*b*) that he had interfered with the right of the plaintiffs to be at liberty to follow their calling as they thought fit by an act which though not in itself unlawful was unjustifiable. And they held that the language used by Allen towards the manager of the company constituted intimidation and coercion. A minority of the law-lords, viz., the Lord Chancellor, Lord Ashbourne, and Lord Morris, adopted the opinions of the majority of the judges. But the majority of the law-lords, viz., Lord Herschell, Lord Watson, Lord Macnaghten, Lord Shand, Lord Davey, and Lord James of Hereford, pronounced for the defendant; first they over-ruled *Bowen* v. *Hall*, thus negativing the doctrine that a lawful act becomes unlawful if done with a bad motive: at the same time several of them, especially Lord Herschell, Lord Macnaghten, and Lord Davey, guarded themselves against being understood to refer to cases of Conspiracy as to which they expressed no opinion; and secondly, they negatived the doctrine that a trader or any person in respect of what he was merely free to do possessed a right not to be interfered with, the only protection to which he was entitled was protection from such acts of interference as were unlawful. The cases on which this doctrine had been supposed to be established proved, on examination, to be cases of interference by unlawful acts. Incidentally they also expressed the opinion that workmen had a right not only to strike, but also to induce others to strike and that a notification of a strike was not unlawful. These questions were discussed by their Lordships on the most general grounds and after a review of the various authorities. (This statement as to effect of *Allen* v. *Flood* must be taken subject to remarks upon it made by the House of Lords in *Quinn* v. *Leathem*.)

The views of the majority of the law-lords are for present purposes sufficiently set forth in the extracts from their judgments given by Mr. Cohen in his memorandum on this case. Those of the minority may, perhaps, be briefly represented by the following:—

With respect to malice. The Lord Chancellor:

P. 83. The objection made by the defendants appears to be that the word "malicious" adds nothing; that if the thing was lawful it was lawful absolutely; if it was not lawful, it was unlawful—the addition of the word "malicious" can make no difference. The fallacy appears to me to reside in the assumption that everything must be absolutely lawful or absolutely unlawful. There are many things which may become lawful or unlawful according to circumstances.

After quoting from judgment of Bowen, L.J., in the Mogul case, his Lordship says:

P. 84. Now the word "malicious" appears to me to negative just cause or excuse; and without attempting an exhaustive exposition of the word itself, it appears to me that if I apply the language of Bowen, L.J., it is enough to show that this was within the meaning of the word "malicious." It appears to me that no better illustration can be given of the distinction on which I am insisting between an act which can be legally done and an act which cannot be so done, than such a colloquy between the representative of the master and the representative of the men as might have been held on the occasion which has given rise to this action. If the representative of the men had in good faith, and without indirect motive, pointed out the inconvenience that might result from having two sets of men working together on the same ship, whose views upon the particular question were so diverse that it would be inexpedient to bring them together, no one could have complained; but if his object was to punish the men belonging to another union because on some former occasion they had worked on an iron ship, it seems to me that the difference of motive may make the whole difference between the lawfulness and unlawfulness of what they did.

Mr. Justice Hawkins:

P. 18. It is now desirable, in my view, to say a few words on the subject of malice, which is alleged to have prompted the defendants' conduct in that which is complained of. When malice is an essential element in a cause of action it is difficult to express in a sentence; for in legal acceptation the terms "malice" and "maliciously" comprise so many wrongful motives and acts, the cases bearing upon them are so numerous, and the pleaders both ancient and modern (so far as they exist) have been in the habit, out of extreme caution, of grouping them with such a host of other expletives, that one derives but little valuable information from the mere use of the terms as to the sense in which they are employed. The definition of legal malice which most thoroughly commends itself to my mind is that expressed by Mr. Justice Bayley in *Bromage* v. *Prosser* (1825, 4 B. and C. 25) which is the basis of most of the definitions of the word to be found in a host of subsequent authorities. "Malice," said that learned judge, in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse. I confess for my own part that I should prefer to confine the term "malice" to its ordinary and proper acceptation; and when that ordinary acceptation is inappropriate, to state the specific wrongful motive or act which brings it within the legal acceptation of malice as it is now understood. If I rightly estimate the effect of the plaintiffs' evidence, I do not think anything falling within the popular acceptation of malice, such as spite or ill-will, is at all essential to the maintenance of the present action, although if it be so there is evidence of its existence; a wrongful motive, however, is essential.

With respect to trade interference. The Lord Chancellor:

The first objection made to the plaintiffs' right to recover for the loss which they thus undoubtedly suffered is that no right of the plaintiffs was infringed, and that the right contended for on this behalf is not a right recognised by law, or at all events only such a right as every one else is entitled to deprive them of if they stop short of physical violence or obstruction. I think the right to employ their labour as they will is a right both recognised by the law and sufficiently guarded by its provisions to make any undue interference with that right an actionable wrong.

And his Lordship quotes amongst other authorities *R.* v. *Druitt* and the well-known passage from Sir William Erle's Memorandum on Trade Unions.

Mr. Justice Hawkins:

P. 14. The case which is substantially before us is a case which rests upon a very broad and solid foundation, requiring no technical breach of contract for its support; namely the violation by the defendant of the legal right which each of the plaintiffs, in common with every man of this country, has to pursue freely and without wrongful hindrance, interruption or molestation that profession, trade or calling which he has adopted for his livelihood . . . The wilful invader without cause or justification, of a man's right to carry on his calling, commits a legal wrong; and that wrong if followed by injury caused thereby to him where right is invaded, affords a legal right of action, and on support of this doctrine, Mr. Justice Hawkins quoted from Sir W. Erle amongst other authorities.

With respect to intimidation. The Lord Chancellor:

P. 83. If, that which was held out as the inducement to dismiss the plaintiffs was that such a stoppage of the works should be occasioned as that the business of the company would seriously suffer, I should think that would be a thing which would be likely to produce fear of the consequences of the company retaining them in their employment, and a company which abstained from doing so by reason of that fear would justly be described as intimidated.

Mr. Justice Hawkins:—

P. 13. It was on account of the expression, "You have no option, &c., that the plaintiffs were discharged by Mr. Halkett, who was in fear of the threat being carried out, which would seriously have impeded the business of the Glengall Company, the threat being extended to every iron-work-man in the employment of the company at whatever place employed. If this was not coercion to do that which it was not the will of the Glengall Company to do, I know not what coercion is: at all events it was evidence of coercion for the Jury to consider.

1897. *Huttley* v. *Simmons*. After *Allen* v. *Flood* were decided two cases which had to be adjudicated in accordance with it. The first of these was *Huttley* v. *Simmons*, a Trade Union case against (as it turned out) an individual for inducing a person not to contract. The plaintiff was a cab-driver, and he sued the defendant, the President of the Strike Committee and others for conspiring to induce a cab-proprietor to refuse to let him a cab to drive. Conspiracy was not proved, so the only question was whether the defendant was liable as an individual. The case was decided at the end of the year 1897, after the decision by the House of Lords of *Allen* v. *Flood*, but it had been heard before. This will account for the form of the questions submitted by the Judge to the Jury, which were framed in accordance with the test of just cause or excuse suggested by Lord Bowen in the Mogul case. The questions and answers were the following:

1. Did the defendant induce Young not to engage the plaintiff to drive a cab for him or to let for hire to plaintiff a cab to be so driven?—*A.* Yes.
2. If so, did defendant do so maliciously, in this sense—did he induce Young to refuse to employ plaintiff or to let a cab on hire to him for any of the following reasons:—
   1. In order to injure plaintiff?—*A.* Yes.
   2. Or to procure some indirect advantage for himself, the defendant?—*A.* No.
   3. Or to procure such advantages for others for whom defendant was acting?—*A.* Yes.

Mr. Justice Darling, on the authority of *Allen* v. *Flood*, pronounced for the defendant: as an individual he had done nothing wrongful and the malicious motive (if any) was immaterial.

This case is criticised in *Quinn* v. *Leathem* by Lord Brampton, p. 531, and Lord Lindley, p. 540.

1898. *Scottish Co-operative Wholesale Society* v. *Glasgow Fleshers' Trade Defence Association and others*, tried in the Outer House, in January, 1898. What was alleged was a Conspiracy by a Trade Union of Traders to induce persons not to sell to the plaintiffs. The Co-operative Stores and the Fleshers were rivals in the butchering trade. The only port for the importation of American and Canadian meat was Yorkhill Wharf, where the animals were put up for sale by cattle-salesmen (auctioneers) and the rivals used to bid against each other. In order to oust the Co-operative Stores from this market, the Fleshers' Association tried to induce the cattle-salesmen to refuse to accept bids from the Co-operative Stores, by threatening that otherwise the Fleshers' Association would not bid themselves. As the Fleshers were the better customers the salesmen yielded. The Co-operative Stores then applied for an interdict against the Fleshers' Association. It was a case evidently having a close resemblance to the Mogul case as decided in the House of Lords, and on the authority of that case and of *Allen* v. *Flood*, Lord Kincairney refused to grant the interdict, on the ground that the Fleshers were not liable for inducing, by means which they were entitled to adopt, the salesmen to do an act in itself lawful. He points out that apart from Conspiracy, the case was settled by *Allen* v. *Flood*.

1898. *Lyons* v. *Wilkins*. This was an action against Trade Union officials for unlawfully and maliciously inducing, and conspiring to induce, persons not to enter into contracts. There was a strike against Lyons, the plaintiff, a boot manufacturer, and in order to bring further pressure upon Lyons the defendants ordered a secondary strike against one Schoenthal, a sub-manufacturer who worked for Lyons, and amongst other things they placed pickets at the door of each establishment, who distributed cards dissuading workmen from working at either place but not containing any threats. Lyons sued the defendants. The case turned in part on Picketing, but it also raised general questions as to the operation of the Common Law upon Strikes, as to the permissibility of preventing persons from working by means of persuasion, and as to a secondary strike being an indictable Conspiracy. The action was commenced in 1896, before *Allen* v. *Flood* had been adjudicated in the House of Lords over-ruling *Bowen* v. *Hall* and reversing the judgment of the Court of Appeal in *Flood* v. *Jackson*. Hence at the earlier stage of the case when the application was made for an interlocutory injunction, the Court was bound by *Bowen* v. *Hall* as to the effect of malice upon a lawful act and by the decision in *Flood* v. *Jackson* that for an individual to induce, by acts not in themselves illegal, persons not to contract with another might be to commit a tort of malicious injury. *Temperton* v. *Russell* was also an authority with respect to Conspiracy to injure. The first step taken was to apply to Mr. Justice North for an interlocutory injunction. That judge admitted that in consequence of the Mogul case the defendants might by lawful means but not otherwise endeavour to prevent persons from working for another party, but, he held, on the authority of *Temperton* v. *Russell* and *Flood* v. *Jackson* that inducing, though by persuasion, only, would be wrongful, if done with a malicious intent to injure and coerce; and of such malicious intent there was, he said, ample evidence in the case before him, both in the affidavits referring to the matters stated above and also in a quarterly report of the Executive Committee circulated amongst the plaintiff's workpeople

and a letter from a discharged workman employed as a picket to Schoenthal His Lordship came to the conclusion that the defendants were endeavouring to destroy the plaintiff's right of contracting with other persons by an act which was proved to be a malicious act Accordingly, he granted an injunction in general terms, restraining the defendants from maliciously inducing or conspiring to induce persons not to enter into the employment of the plaintiff.

The defendants appealed, and the appeal was heard in the same year (consequently before the reversal of *Flood* v. *Jackson* by the House of Lords) in the Court of Appeal, consisting of Lord Lindley and Kay and A. L. Smith, L.J.J. The Court held that "watching and besetting" for any other purpose than that expressly authorised by the Statute, viz., obtaining or communicating information, was forbidden by the Statute, and, therefore, that watching and besetting for the purpose of persuasion was forbidden, also that under Section 7 it was not necessary that the person molested should be the person intended to be coerced. They also agreed that there should be an interlocutory injunction against the defendants, but they thought it should be framed more definitely and be limited to restraining only from what was thus expressly forbidden. But in directing this variation Lord Lindley observed (p 826), "I do not think we are disagreeing with Mr. Justice North at all." In addition the Court made other pronouncements of very wide and important operation:

In the course of the argument, Lord Lindley had let fall the observation (p. 820), "You cannot make a strike effective without doing more than is lawful," and when he came to deliver judgment, he used these words:—

P. 822. With regard to the picketing, what the defendants have been doing is not in dispute. They have been placing a few men about the plaintiff's works, and telling them to accost workpeople and to show them certain cards [His Lordship then described these cards and continued]: The consequence of these proceedings is that the Trade Union are in effect preventing Messrs. Lyons from carrying on their business upon such terms as they may choose to arrange with people who come to an agreement with them. Of course one sees the difficulty in which all Trade Unions find themselves. Strikes and Trade Unions, which were formerly considered illegal have now been legalised—at all events so far as the doctrines as to restraint of trade are concerned—and a strike can be conducted up to a certain point with perfect legality. That is to say, persons cannot only decline individually to work for a master except upon terms which the workmen desire to obtain, but they can combine to do that. They can combine to leave him, they can strike unless he will raise the wages up to what they desire, and Trade Unions which assist them in withdrawing their own labour and declining to work and which assist them in supporting themselves during the strike, can legally do so. Then arises a difficulty, which is as well known to those who conduct Trade Unions as it is to the masters and to all who have experience in these disputes, and it may be put thus: "If that is all that we can do, we may be defeated by the masters making arrangements with other people who may be willing to work for them, either by taking the work home or by working for less wages than we think is right, and unless we can stop that our strike may be ineffective." Then comes the struggle. Now Parliament has not yet conferred upon Trade Unions the power to coerce people and prevent them from working for whomsoever they like, upon any terms they like, and yet, in the absence of such a power, it is obvious that a strike may not be effective, and may not answer its purpose. Some strikes are perfectly effective by virtue of the mere strike, and other strikes are not effective unless the next step can be taken, and unless other people can be prevented from taking the place of the strikers. That is the pinch of the case in trade disputes, and until Parliament confers on Trade Unions the power of saying to other people: "You shall not work for those who are desirous of employing you upon such terms as you and they may mutually agree upon, Trade Unions exceed their power when they try to compel people not to work except on the terms fixed by the Unions. I need hardly say that, up to the present moment, no such power as that exists by the law of this country, no one has ever, and no set of people ever, had that right or that power.

Lord Lindley deals expressly with the secondary strike against Schoenthal:—

Schoenthal's case is one in which it appears to me that the defendants have already gone too far, and it is idle to say that their object in doing what they did to Schoenthal was not to compel Messrs. Lyons to do that which the Trade Union wanted. Schoenthal was the out-worker, and what they did was to tell people not to work for him, in order to prevent him working for Messrs. Lyons and in order to hit Messrs. Lyons through him. That appears to me to be an obvious stretching of the Act which the defendants cannot properly justify.

Lord Justice Kay followed: p. 628.

The Trade Union gives Messrs. Lyons & Co. notice that they object to those wages, and that they shall call out the workmen and induce a strike if those wages are not altered. Messrs. Lyons & Co., abiding by their particular course of business, refuse to raise the wages and a strike is resolved upon, and the Trade Union does all in its power to encourage and carry out and make effective the struggle. Before the Acts of 1871 and 1875 the strike itself would have been illegal. The combination of a number of persons to induce and encourage and bring about a strike would have been an illegal act. But Sec. 3 of the Act of 1875, which Lindley, L. J., has just read rendered legal an agreement or combination by two or more persons to do or procure any act to be done in contemplation or furtherance of a trade dispute between employer and workmen, and, provided that it should not be indictable as a Conspiracy, if such act committed by one person would not be a crime. Thus it appears that strikes are legalised by Act of Parliament, and that one person would not be indictable for a crime by endeavouring to encourage or bring about that which in itself is not illegal, namely, a strike. Therefore, a combination of two or more persons would come exactly within the words of that section, and would not, since this Act of Parliament, be an offence against the law.

But then it does not go farther than that. At present, the Legislature have simply legalised strikes, and a strike is an agreement between two persons who are working for a particular employer not to work for him. Also I take it that under the terms of the section which I have read, it is not illegal for a Trade Union to promote that strike. But further than that the law has not gone.

Now what have the Trade Unions been doing in this particular case? In the first place they have been planting two or three persons, &c. . . . The other thing complained of is that of Schoenthal; he was a person who carried on works at his own place of business, and he did a certain amount of work for the plaintiffs. He employed workmen under him separately; and this Trade Union intimated to him that, if he went on working for the plaintiff, they would call out his workmen—not because they objected to the wages that he was giving them, not in order to make a strike of the workmen for the sake of those workmen as between them and their own employer, but for the express and direct purpose of preventing Schoenthal from working for Messrs. Lyons & Co., and of putting in this manner additional pressure upon Messrs. Lyons & Co. so as to induce them to come to the terms which they wished to establish between Messrs. Lyons & Co. and the workmen of Messrs. Lyons & Co.

Now are these things legal? It seems to me that one has only to look at the Act of Parliament to see that it is quite impossible to maintain the legality of either of these acts. I hold distinctly that it is illegal to picket, &c. [as the defendants had picketed for the purpose of persuading as distinct from the purpose of obtaining or communicating information] . . . Still more clearly is it illegal to induce a man or prevent a man in the position of Schoenthal from working for the plaintiff by calling out the workmen of that man, and inducing them not to work for him, that being done for the purpose of putting pressure both upon Schoenthal and Messrs. Lyons, by preventing Schoenthal from working for Messrs. Lyons, and I cannot read Section 7 without seeing distinctly that these things are not permissible by Act of Parliament, and no Act of Parliament can be referred to which makes them lawful. . . . Now let me take Schoenthal's case. In that case they are not merely persuading Schoenthal not to work, but they are trying to prevent his working. They have no right to prevent anybody working; they have no right to prevent one of his workmen working for him. If they use means to prevent his working, that is not encouraging a strike; it is doing something far more. If by any means they prevent Schoenthal from working for Messrs Lyons, that is an illegal act. They have conspired together, and combined to take means to prevent somebody from working for Messrs Lyons, who would otherwise do so. No Act of Parliament justifies that. It would have been illegal before the Act. There is nothing in this Act which justifies it, and it is illegal.

Finally, A. L. Smith, L.J., resting the case upon the strike against Schoenthal, being a secondary strike and not a Trade Dispute between employers and workmen within Section 3 of the Act of 1875 thus expressed himself (p. 883):

Prior to the year 1871 it could not have been said in a Court of Law that a strike was legal, or that picketing was legal, and there is ample authority to this effect. . . . Now the complaint of Messrs. Lyons is, that what the defendants have been doing was illegal at Common Law. To that the defendants make answer: "That is all very well your saying that it is illegal at Common Law; you would have been right before the year 1871. First in the year 1871, and especially in 1875, we, the Trade Unions, had two Acts of Parliament passed which legalise what we are doing upon this occasion." That these two Acts are really the charters and foundations of the legality of Trade Unions cannot be denied. There is no doubt that a Trade Union now, as long as it carries on its affairs up to a certain point, is as legal as any other community or combination in the kingdom. Of that there cannot be a doubt. But Mr. Levett answers: "Yes, you may have these charters, namely, the Act of 1871 and the Act of 1875, yet what you are doing is outside what has been granted to you by the legislators:" and the real question is, whether or not it has been shown that what the defendants have been doing is outside of the powers granted to them by Parliament.

Now, what have the defendants been doing? In the first place they induced Messrs. Lyons' men to strike for the purpose of getting better wages, which is perfectly lawful. There cannot be a doubt about that, and, as regards what they did in inducing Messrs. Lyons' men to go out on strike, the Acts of Parliament which have been passed in favour of Trade Unions undoubtedly allow them to do that. And if that was all that they had done, there would be no foundation whatever for an application for an injunction in this case. But they have done more. The procedure which they have adopted as regards Mr. Schoenthal is not authorised by the Statute. The particular portion of the Statute which in reality authorises those strikes being promoted or encouraged by Trade Unions is the third Section of the Act of 1875. Now, was there any trade dispute between Mr. Schoenthal's workmen and himself? If there had been (p. 834) a trade dispute between Mr. Schoenthal's workmen and himself, I apprehend that the Trade Union might have done as regards Mr. Schoenthal exactly that which they did as regards Messrs. Lyons, and they might have called his men out on strike; but that is not the state of things. There was no dispute between Mr. Schoenthal and his men. What the Union did was not done in furtherance of a trade dispute between Mr. Schoenthal and his men, but what they did was to call out Mr. Schoenthal's men in order to prevent him from working for Messrs. Lyons, and thus to compel Mr. Schoenthal, who was willing to work for Messrs. Lyons, not to work for them, by depriving him of the men wherewith to work for Messrs. Lyons and by this means to injure Messrs. Lyons in their trade, if they did not obey the edicts of the Union. In my opinion this was inadmissible under the Acts of Parliament I have mentioned, and was illegal, and, inasmuch as the acts were clearly intended to and did hurt and injure Messrs. Lyons in their trade, they were proceedings which this Court has jurisdiction to stop by injunction, when it finds they have been commenced, and may continue. The strike of the Trade Union against Schoenthal was, as I have pointed out, in my judgment, illegal.

In result the Court decided to modify the form of the interlocutory injunction. As amended, it restrained the defendants, their servants and agents, from watching and besetting the plaintiff's works for the purpose of persuading or otherwise preventing persons from working for them or or any purpose except merely to obtain or communicate information; and also from preventing Schoenthal or other persons from working for the plaintiffs by withdrawing his or their workmen from their employment respectively.

Thus in its latter part the injunction—granted, it must be remembered, before the reversal of *Flood* v. *Jackson*, by the House of Lords—did in terms prohibit not indeed workmen from striking but trade officials from organising a strike which was a secondary strike.

The case went to trial in 1898, before Byrne J., who, however, postponed judgment until *Allen* v. *Flood* should have been adjudicated. He then decided, 1st, that the plaintiffs were entitled to a perpetual injunction to restrain the defendants from watching and besetting for the purpose of persuading—this being prohibited by Statute. Secondly, that the effect of *Allen* v. *Flood* was to show that the plaintiffs were not entitled to an injunction restraining the defendants from maliciously inducing or conspiring to induce persons not to enter into contracts with the plaintiffs. "It was probable," he said:—

That the Court of Appeal would have framed the second part of the injunction they granted in a different manner had the case of *Allen* v. *Flood* been then decided by the House of Lords. For it was conceded by the plaintiffs that they could not succeed unless they could show malice; and it was the law as finally decided by the House of Lords that the existence of a malicious motive would not in such a case render unlawful an act or acts otherwise lawful.

From this judgment of Byrne, J. the plaintiffs did not appeal; the defendants did, but their contention and the judgment upon it of the Court of Appeal had reference exclusively to the law of picketing, and in consequence that Court had no opportunity to review Mr. Justice Byrne's refusal to perpetuate the injunction against inducing persons not to enter into contracts.

Mr. Justice Byrne's decision was, however, subsequently made the subject of remarks by Lord Lindley in *Quinn* v. *Leathem*. His Lordship asked:—

"Is a combination to annoy a person's customers so as to compel them to leave him unless he obeys the combination permitted by the Act (of 1875) or not? It is not forbidden by Section 7. Is it permitted by Section 3? I cannot think that it is. The Court of Appeal (of which I was a member) so decided in *Lyons* v. *Wilkins*, in the case of Schoenthal. . . . This particular point had not to be reconsidered when *Lyons* v. *Wilkins* came before the Court of Appeal after the decision of *Allen* v. *Flood*, but Byrne J. modified the injunction, granted on the first occasion, by confining it to watching and besetting. He might safely have gone further and have restrained the use of other unlawful means; but the strike was then over and his modification was not objected to, and cannot be regarded as an authority in favour of the appellant Quinn's contention."

The defendants appeal against the decision, so far as it treated watching and besetting for the purpose of peaceable persuasion as forbidden by the Statute, was dismissed. Lord Lindley said:—

P. 267. The truth is that to watch or beset a man's house with a view to compel him to do or not to do what is lawful for him not to do or to do is wrongful, and without lawful authority, unless some reasonable justification for it is consistent with the evidence. Such conduct seriously interferes with the ordinary comfort of human existence and ordinary enjoyment of the house beset, and such conduct would support an action on the case for a nuisance at common law. . . Proof that the nuisance was "peaceably to persuade other people" would afford no defence to such an action. Persons may be peaceably persuaded provided the method employed to persuade is not a nuisance to other people.

Chitty, L.J., concurred.

Vaughan Williams, L.J., considered himself bound by the previous decision of the Court on the grant of the interlocutory injunction, but remarked:—

"It is not, I understand, suggested in this case or found by Bryne J. that there are any facts in the present case to constitute the present persuasion a common law nuisance.

1900. *Boots* v. *Grundy*, A case of alleged tort by certain traders of inducing persons not to enter into contracts with certain other traders, and of Conspiracy so to induce. By their statement of claim the plaintiffs alleged that the defendant—their rivals, who sold prints at higher prices—had prevented and combined with others to prevent the plaintiffs from carrying on their trade as printsellers, and with this purpose had issued circulars requesting third parties (the provincial trade) not to give orders to those publishers who supplied the plaintiffs. Bigham, J., ordered this allegation to be struck out of the claim as disclosing no cause of action. In delivering judgment he made the following observations which bear on torts committed by individuals:—

In my opinion the charge amounts to nothing which can be described as a wrong to the plaintiffs. If true it does not violate any right of the plaintiffs, and therefore it affords them no cause of action; for one man is entitled as against all the world to ask another to refrain from doing an act which that other may lawfully omit to do. But it is said (par. 6) that the defendants' acts were calculated to damage, and were done with the intention of damaging the plaintiffs in their business, and further that they were unlawful and in restraint of the plaintiffs' right to trade freely and were done maliciously and without just cause or excuse. These allegations do not better the plaintiffs' position. The intention is immaterial if the acts are not wrongful, and merely to say that they are unlawful does not make them so. That they resulted in loss to the plaintiffs or in a restriction of their trade is equally immaterial, for no one is responsible to another for the consequence of a lawful act. It is useless to say that legal acts are malicious or are done without just cause or excuse; for no lawful act can be malicious in a legal sense, nor does it require to be defended by any just cause or excuse. Cause of action arises out of acts done, not out of intention; and though morally a man may be blamable for exercising his rights for the mere purpose of hurting his neighbour, it is better in my opinion that he should be condemned in the tribunal of public opinion than that his intention should be the subject of inquiry in a Court of Law.

As to Conspiracy he said:—

"A Conspiracy exists when two or more combine to do an unlawful act or to do a lawful act by unlawfu means. No conspiracy in my opinion is known to the law which has not for its object the accomplishment of an unlawful act (not necessarily a criminal act) or which does not involve the use of unlawful means. This, I think, is the result of *Kearney* v. *Lloyd*, and the Mogul case. Further, I think that, though probably all conspiracies, as I define them, are criminal and therefore indictable, no conspiracy can give rise to a civil action unless it violates or threatens to violate the rights of an individual as distinguished from the rights of the public at large. . . . I think for reasons which will be found in Lord Herschell's judgment in *Allen* v. *Flood*, first, that the fact that the case was one of trade competition is of no significance, and secondly, that, the acts complained of being lawful, the object with which they were done would in no case be material.

Phillimore, J., agreed, so far as concerned acts of individuals:—

"That any single person can use his utmost endeavour to prevent third persons from dealing with another man and thus deprive him of his trade and even of his means of livelihood is settled by the decision of the House of Lords in *Allen* v. *Flood*; and I presume what one could do, any number of persons, acting separately and without concert, could equally do."

But, after a careful review of the cases, he differed with respect to Conspiracy. He considered that "given the confederacy, the motive and purpose makes all the difference," and therefore that a combination to do acts not in themselves criminal or wrongful, but harmful, will be a Conspiracy both indictable and actionable, if the acts are done for such a purpose as that of preventing others from carrying on their trade.

1901. *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants.*—Action against union and officials for conspiring to induce breach of contract, and to interfere with the railway company by picketing and other unlawful acts. Verdict against defendants. Held in House of Lords that Union funds were liable. This case is dealt with in the body of the Report.

1901. *Quinn* v. *Leathem.* A Trade Union Tort and Conspiracy case from Ireland. The case was heard in the Court below, under the name of *Leathem* v. *Craig*. The plaintiff, Leathem, Master Butcher, sued the defendants, Trade Unionist officials (Craig being the president, Quinn, the treasurer) for damages for procuring persons to break contracts and not to enter into contracts with him; and for procuring workmen in the employment of such persons to leave the service of their employers and to break their contracts of service, with intent to injure the plaintiff, and to prevent such persons from carrying out their contracts with the plaintiff, and from entering into other contracts with him; and for intimidating such servants and coercing them to leave the service of their employers to the injury of the plaintiff; and for unlawfully *conspiring* together with others to do the acts aforesaid with intent to injure the plaintiff. The plaintiff was a butcher at Lisburn, about eight miles from Belfast; he employed non-unionists only. He had for foreman a man who had been with him ten years, and he himself had for twenty years been in the habit of supplying meat to Munce, a butcher in Belfast, to the value of £30 a week on the average. Munce employed Unionists. The defendants were butchers' assistants in Lisburn and Belfast. In the spring of 1895 the defendants formed themselves into a Trade Union, and one of the rules they made was that they would not work with non-union men or cut up meat that came from a place where non-union men were employed. In July of the same year the defendants required the plaintiff to dismiss his foreman. The plaintiff negotiated on behalf of his foreman and his men, and offered to pay all fines against them and asked to have them admitted to the society. The defendants rejected this proposal saying that the plaintiff's men should be punished and should be put to walk the streets for twelve months. The plaintiff refused to comply with defendants' demand, thereupon the defendants called on some of his men to leave him, but as they were non-unionists the Union could do no more than induce one of them to leave. This, however, was in breach of contract. They then demanded of Munce to discontinue taking meat from plaintiff, with "threat" of strike against him (in the nature of a secondary strike). Munce complied, to the great loss of the plaintiff. The "threats" which the Unionists sent during the negotiations were, to the plaintiff, "If you continue as at present our society will be obliged to adopt extreme measures in your case," and to Munce, "We have endeavoured to make satisfactory arrangement [with Leathem], but have failed, so therefore have no other alternative but to instruct your employees to cease work immediately Leathem's beef arrives." The action began in November, 1896 and the Jury trial took place before the decision of the House of Lords in *Allen* v. *Flood* had reversed the decision of the Court of Appeal, in *Flood* v. *Jackson*. Consequently *Flood* v. *Jackson* and *Bowen* v. *Hall* on which it was based were authorities binding on the Judge: also *Temperton* v. *Russell*. By the time that *Leathem* v. *Craig* reached the Queen's Bench Division the House of Lords had adjudicated *Allen* v. *Flood*. The defendants did not offer any evidence and their Counsel asked for a direction on the grounds, 1. That to sustain the action a contract made with Leathem must be proved to have been made, and broken through the acts of the defendants, and that there was no evidence of such contract or breach. 2. That there was no evidence of pecuniary damage to the plaintiff through the acts of the defendants. 3. That the ends of the defendants and the means taken by them to promote their ends were legitimate and there was no evidence of actual damage to the plaintiff. The Judge declined to withdraw the case from the Jury, and left with them the following questions:

1. Did the defendants or any of them wrongfully and maliciously induce the customers or servants of the plaintiff named in the evidence to refuse to deal with the plaintiff?
2. Did the defendants or any two or more of them maliciously conspire to induce the plaintiff's customers or servants named in the evidence, or any of them, not to deal with the plaintiff or not to continue in his employment; and were such persons so induced not so to do?
3. As to Black Lists (this matter was subsequently dropped).

In putting these questions the Judge told the Jury:

That the questions left them were questions of fact to be determined on the evidence, but that they included questions as to the intent of the defendants and in particular their intent to injure the plaintiff in his trade as distinguished from the intent of legitimately advancing their own interests. Upon the meaning of the

words "wrongfully and maliciously" in the questions the Lord Justice told the jury that they had to consider whether the intent and actions of the defendants went beyond the limits which would not be actionable, namely securing or advancing their own interests or those of their trade by reasonable means (including lawful combination); or whether their acts as proved were intended and calculated to injure the plaintiff in his trade through a combination and with a common purpose to prevent the free action of his customers and servants in dealing with him, with the effect of actually injuring him, as distinct from acts legitimately done to secure or advance their own interests. Finally he told the Jury that acts done with the object of increasing the profits or raising the wages of any combination of persons such as the society to which the defendants belonged, whether employers or employed, by reasonable and legitimate means were perfectly lawful and were not actionable so long as no wrongful act was maliciously—that is intentionally—done to injure a third party.

The jury answered both the questions in the affirmative. They were not asked and delivered no specific finding as to inducing breach of contract (p. 674) or as to the use of threats or coercion (p. 704). Judgment was entered for the plaintiff, and the defendants then moved to set aside the verdict and judgment, and that judgment should be entered for them on the ground of misdirection, or for a new trial, the judge having refused to direct for the defendants, and, as was alleged, no actionable wrong having been shown on the evidence.

In November, 1898, the motion came on in the Queen's Bench Division in Ireland. By this time the judgment of the House of Lords in *Allen* . *Flood* had been delivered. The judges, while regretting that judgment, were all agreed that in consequence of it the case before them would not have been sustainable as against an individual, and was only sustainable on the ground of Conspiracy; O'Brien, J., in particular, stating (p. 688) that *Allen* v. *Flood* had reversed the proposition of Sir W. Erle (with regard to the right of protection against Trade interference) as to the individual, and Palles, C. B. (p. 706) that the reversal by the House of Lords in the judgment of the Court of Appeal in *Flood* v. *Jackson* was a clear decision that it is not actionable for a single person, who is not acting in combination with others, to maliciously induce another not to enter into a contract with a third, although loss to such a third person results from such inducement. All the judges, however, except Chief Baron Palles, were of opinion that there was a good cause of action in Conspiracy, with which subject *Allen* v. *Flood* had nothing to do, and they upheld the verdict accordingly. The Chief Baron considered that there ought to be a new trial on the ground that by the direction of the Judge the jury had assessed in a lump sum—which was unapportionable by the Court—the damages for a combination to break contracts which was actionable, and the damages for preventing contracts from being entered into which in his opinion was not actionable. The ground for that opinion was that on the one hand the Mogul case had decided that acts done by several persons acting in combination, although they cause loss or harm to another cannot be made the subject of an action unless the same acts would have been actionable had they been those of one person only, acting alone and independently of others, and on the other, *Allen* v. *Flood* had decided that acts of prevention of contracts being entered into would not be actionable if they were those of a single person only. Hence *Temperton* v. *Russell*, though not expressly disapproved by *Allen* v. *Flood*, could no longer be relied upon as an authority. The Chief Baron also referred to Section 3 of the Conspiracy, an Act under which he held that the combination to prevent contracts being entered into was to be deemed not an indictable Conspiracy, since the acts done had been, within the words of the section, done in contemplation or futherence of a Trade dispute between Employers and Workmen.

"The whole course of the trial," he said, "showed that the origin of the acts in question was such a trade dispute and that these acts were done in furtherance of it."

The defendants then appealed, but the Court of Appeal in Ireland unanimously affirmed the decision of the Court below. The case was then taken to the House of Lords and they unanimously dismissed the appeal.

The points ultimately decided by the House of Lords were:—

1. That in accordance with *Temperton* v. *Russell*, a combination to injure or an oppressive combination is known to the law as a criminal Conspiracy, and that the defendants had been parties to such a Conspiracy.

2. That as parties to such a Conspiracy they were liable to a civil action for damages ensuing from it, even supposing they were protected by Section 3 of the Act of 1875, from being indicted in respect of the same. That section had nothing to do with civil liability.

3. That in point of fact the defendants were not so protected, since what they had done were not acts in contemplation or futherance of a Trade dispute between Employers and Workmen within the meaning of the Section.

4. That as individuals the defendants had committed a tort by interfering with the right of the plaintiff to conduct his business as he thought fit.

With respect to *Allen* v. *Flood* the observations of the Law-Lords were to the following effect:

The Lord Chancellor, after stating that he did not understand that any one had doubted before the decision in *Allen* v. *Flood* the facts of *Quinn* v. *Leathem* would have established a cause of action against the defendants, thus proceeded:—

'Now before discussing the case of *Allen* v. *Flood* and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular acts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that the case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. My Lords, I think the application of these two principles renders the decision of this case perfectly plain, notwithstanding the decision of the case of *Allen* v. *Flood*.

Now the hypothesis of fact upon which *Allen* v. *Flood* was decided by a majority in this House was that the defendant there neither uttered nor carried into effect any threat at all; he simply warned the plaintiff's employers of what the men themselves without his persuasion or influence had determined to do, and it was certainly proved that no resolution of the Trade Union had been arrived at at all, and that the Trade Union official had no authority himself to call out the men, which in that case was argued to be the threat which coerced the employers to discharge the plaintiff. It was further an element in the decision that there was no case of conspiracy or even combination. What was alleged to be done was only the independent and single action of the defendant actuated in what he did by the desire to express his own views in favour of his fellow-members. It is true that I personally did not believe that was the true view of the facts, but, as I have said, we must look at the hypothesis of fact upon which the case was decided by the majority of those who took part in the decision. My Lords, in my view what has been said already is enough to decide this case without going further into the facts of *Allen* v. *Flood*, but I cannot forbear accepting with cordiality the statement of them prepared by two of your Lordships, Lord Brampton and Lord Lindley, with so much care and precision. Now in this case it cannot be denied that if the verdict stands there was conspiracy and threats; and threats carried into execution, so that loss of business and interference with the plaintiff's legal rights are abundantly proved; and I do not understand the

very learned judge (Pallas, C.B.) who dissented to have doubted any one of those propositions, but his view was grounded on the belief that *Allen* v. *Flood* had altered the law in these respects, and made that lawful which would clearly have been actionable before the decision of that case. My Lords, for the reasons I have given, I cannot agree with that conclusion. I do not deny that if some of the observations made in that case were to be pushed to their logical conclusion, it would be very difficult to resist the Chief Baron's inflexible logic; but with all the respect which any view of that learned Judge is entitled to command and which I unfeignedly entertain, I cannot concur. This case is distinguished in its facts from those which were the essentially important facts in *Allen* v. *Flood*. Rightly or wrongly, the theory upon which judgment was pronounced in that case is one whereby the present is shown to be one which the majority of your Lordships would have held to be a case of actionable injury inflicted without any excuse whatever.

Lord Macnaghten said he could not help thinking that the case of *Allen* v. *Flood* had very little to do with the question then under consideration. The head note to *Allen* v. *Flood* might well have run in words used by Parke B in giving the judgment of an exceptionally strong Court nearly half a century ago (*Stevenson* v. *Newnham*). 'An act which does not amount to a legal injury cannot be actionable because it is done with a bad intent.' That, in his opinion, was the sum and substance of *Allen* v. *Flood*; if all matters of passing interest were eliminated.

Lord Shand said:—

"As to the vital distinction between *Allen* v. *Flood* and the present case, it may be stated in a single sect. In *Allen* v. *Flood* the purpose of the defendnat was by the acts complained of to promote his own trade interest, which it was held he was entitled to do, although it was injurious to his competitors; whereas, in the present case—which it is clear there was combination—the purpose of the defendants was to injure the plaintiff in his trade as distinguished from the intention of legitimately advancing their own interests."

514. The ground of judgment of the majority of the House, however varied in expression by their Lordships, was, as it appears to me, that Allen in what he said and did was only exercising the right of himself and his fellow workmen as competitors in the labour market, and the effect of injury thus caused to others from such competition, which was legitimate, was not a legal wrong.

515. The case of *Allen* v. *Flood* as a case of legitimate competition in the labour market is essentially different and gives no ground for the defendant's argument.

Lord Brampton observed:—

"Rightly understood, I think the judgment in *Allen* v. *Flood* is harmless in this case. But I need hardly say, that in order to understand and appreciate it, it is essential to ascertain what was the material facts assumed by their Lordships who assented to that judgment, and what were the principles of law applied by them to those facts."

P. 525. In this case the alleged cause of action is very different from that in *Allen* v. *Flood*.

Lord Lindley:—

Different views were taken by the noble Lords who heard the appeal as to Allen's authority to call out the members of the Union, and also as to the means used by Allen to induce the employers of the plaintiffs to discharge them; but in the opinion of the noble Lords who proved the majority of your Lordship's House, all that Allen did was to inform the employers of the plaintiffs that most of their workmen would leave them if they did not discharge the plaintiffs. There being no question of conspiracy, intimidation, coercion, or breach of contract for consideration by the House, and the majority of their Lordships having come to the conclusion that Allen had done no more than I have stated, the majority of the noble Lords held that the action against Allen would not lie; that he had infringed no right of the plaintiffs, that he had done nothing which he had no legal right to do, and the fact that he had acted maliciously and with intent to injure the plaintiffs did not, without more, entitle the plaintiffs to maintain the action. My Lords, this decision, as I understand it, establishes two propositions: one a far-reaching and extremely important proposition of law, and the other a comparatively unimportant proposition of mixed law and fact—useful as a guide, but of a very different character from the first.

The first and important proposition is that an act otherwise lawful, though harmful, does not become actionable by being done maliciously in the sense of proceeding from a bad motive and with intent to annoy or harm another. This is a doctrine not new or laid down for the first time in *Allen* v. *Flood*; it had been gaining ground for some time, but it was never before so fully and authoritatively expounded as in that case. In applying this proposition care, however, must be taken to bear in mind first that in *Allen* v. *Flood* criminal responsibility had not to be considered. It would revolutionise criminal law to say that the criminal responsibility for conduct never depends on intention. Secondly, it must be borne in mind that even in considering a person's liability to civil proceedings the proposition only applies to "acts otherwise lawful," *i.e.*, to acts, involving no breach of duty, or, in other words, no wrong to any one. I shall refer to this matter later on.

The second proposition is that Allen infringed no right of the plaintiffs, even though he acted maliciously and with a view to injure them. I have already stated what he did, and all that he did, in the opinion of the noble Lords. If this view of the facts were correct, this conclusion that Allen infringed no right of the plaintiffs is perfectly unintelligible and indeed unavoidable. Truly, to inform a person that others will annoy or injure him unless he acts in a particular way, cannot of itself be actionable, whatever the motive or intention of the informant may have been. My Lords, the questions whether Allen had more power over the men than some of their Lordships thought, or whether Allen did more than they thought, are mere questions of fact. Neither of these questions is a question of law, and no Court or Jury is bound as a matter of law to draw from the facts before it, inferences of fact, similar to those drawn by noble Lords from the evidence relating to Allen in the case before them.

P. 536. The facts of this case are entirely different from those which this House had to consider in *Allen* v. *Flood*.

P. 537. There is not a single decision anterior to *Allen* v. *Flood* in favour of the appellant. His sheet anchor is *Allen* v. *Flood* which is far from covering this case, and which can only be made to cover it by greatly extending its operation.

P. 542. *Allen* v. *Flood* is in many respects a very valuable decision, but it may be easily understood and carried too far. Your Lordships are asked to extend it, and to destroy that individual liberty which our law so anxiously guards. The appellant seeks by means of *Allen* v. *Flood* and by logical reasoning based upon some passages in the judgments of the noble Lords who decided it, to drive your Lordships to hold that boycotting by Trade Unions in one of its most objectionable forms is lawful and gives no cause of action to its victims, although they may be pecuniarily ruined thereby.

As to the cause of action in Quinn *v.* Leathem being conspiracy:

The Lord Chancellor:

P. 505. In this case the plaintiff has by a properly framed statement of claim complained of the defendants, and proved to the satisfaction of a Jury that the defendants have wrongfully and maliciously induced customers and servants to cease to deal with the plaintiff; that the defendants did this in pursuance of a conspiracy framed among them; that in pursuance of the same conspiracy they induced servants of the plaintiff not to continue in the plaintiff's employment; and that all this was done with malice in order to injure the plaintiff, and that it did injure the plaintiff.

P. 507. If the verdict stands, there was conspiracy, threats and threats carried into execution.

Lord Macnaghten:

P. 509. The case really brought under review in this appeal is *Temperton* v. *Russell*. I cannot distinguish that case from the present. The facts are, in substance, identical; the grounds of decision must be the same. Now the decision in *Templeton* v. *Russell* were not overruled in *Allen* v. *Flood*, nor is the authority of *Temperton* v. *Russell*, in my opinion, shaken in the least by the decision in *Allen* v. *Flood*.

P. 510. Does a conspiracy to injure resulting in damage give rise to civil liability? It seems to me that there is authority for that proposition, and that it is founded on good sense. *Gregory* v. *Duke of Brunswick* is one authority

and there are others. There are valuable observations on the subject in, Erle J.'s, charge to the Jury in Duffield's case and Rowland's case. Those were cases of Trade Union outrages; but the observations to which I refer are not confined to cases depending on exploded doctrines with regard to restraint of trade. There are also weighty observations to be found in the charge delivered by Lord; FitzGerald, then FitzGerald, J., in *Reg* v. *Parnell and others*. That a Conspiracy to injure—an oppressive combination—differs widely from an invasion of civil rights by a single individual cannot be doubted. I agree, in substance, with the remarks of Bowen, L. J., and Lords Bramwell and Hannen in the Mogul case. A man may resist without much difficulty the wrongful act of an individual. He would probably have at least the moral support of his friends and neighbours; but it is a very different thing (as Lord FitzGerald observes) when one man has to defend himself against many combined to do him wrong;.

P. 511. The defendants conspired to do harm to Munce in order to compel him to do harm to Leathem, and so enable them to wreak their vengeance on Leathem's servants who were not members of the Union.

Lord Shand:

P. 513. According to the evidence and verdict of the Jury, the defendants, by combined action, wrongfully and maliciously induced a number of persons to refrain from dealing with the plaintiff. That is sufficient for the decision of the case. . . . On the whole, it seems to me clear that the defendants were guilty of unlawful acts, unless the judgment in the case of *Allen* v. *Flood* has introduced a change which has rendered such acts lawful.

Lord Brampton:

P. 525. The real and substantial cause of the action is an unlawful conspiracy to molest the plaintiff, or trader, in carrying on his business, and by so doing to invade his lawful right.

P. 529. It has often been debated whether, assuming the existence of a conspiracy to do a wrongful and harmful act towards another, and to carry it out by a number of overt acts no one of which taken singly and alone would, if done by one individual acting alone and apart from any conspiracy, constitute a cause of action, such acts would become unlawful or actionable if done by the conspirators acting jointly or severally in pursuance of their conspiracy, and if by those acts substantial damage was caused to the person against whom the conspiracy was directed; my own opinion is that they would. In dealing with the question it must be borne in mind that conspiracy to do harm to another is from the moment of its formation unlawful and criminal, though not actionable unless damage is the result.

Lord Lindley:

P. 535. The principle which underlies the decision (in *Lumley* v. *Gye*) reaches all wrongful acts done intentionally to damage a particular individual and actually damaging him. . . . In *Temperton* v. *Russell* there was a wrongful act, namely, Conspiracy and unjustifiable interference with Brentano, who dealt with the plaintiff. This wrongful act warranted the decision, which I think was right.

As to the cause of action having been a tort:

Lord Brampton:

P. 525. In speaking of the undoubted right of the plaintiff which had in his opinion been invaded, he refers to the observations of Alderson B. in *Hilton* v. *Eckersley*, of the present Lord Chancellor in the Mogul case, of Baron Bramwell in *R.* v. *Druitt*, and the following passage in Sir W. Erle's memorandum: "Every person has a right under the law as between himself and his fellow-subjects to full freedom in disposing of his own labour or of his own capital according to his will. It follows that every other person is subject to the correlative duty arising therefrom and is prohibited from any obstruction to the fullest exercise of this right, which can be made compatible with the exercise of similar rights by others."

and his lordship added:

"I am not aware that the rights thus stated have ever been seriously questioned; I rest my judgment upon the principle expressed in these few sentences. I seek for no more."

Lord Lindley:

P. 534. As to the plaintiff's rights. He had the ordinary rights of a British subject. He was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognised by law: its correlative is the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. But a person's liberty or right to deal with others is nugatory unless they are at liberty to deal with him it they choose to do. Any interference with their liberty to deal with him affects him.

P. 536. What the defendants did was to threaten to call out the Union workmen of the plaintiff and his customers if he would not discharge some non-union men in his employ. In other words in order to compel the plaintiff to discharge some of his men the defendants threatened to put the plaintiff and his customers and persons lawfully working for them to all the inconvenience they could without using violence.

P. 536. The remaining question is whether such conduct infringed the plaintiff's rights so as to give him a cause of action. In my opinion it plainly did. The defendants were doing a great deal more than exercising their own rights: they were dictating to the plaintiff and his customers and servants what they were to do. The defendants were violating their duty to the plaintiff and his customers and servants, which was to leave them in the undisturbed enjoyment of this liberty of action as already explained. What is the legal justification or excuse for such conduct? None is alleged and none can be found. . . . Your Lordships have to deal with a case, not of *damnum absque injuria*, but of *damnum cum injuria*. . . . There is not a single decision anterior to *Allen* v. *Flood* in favour of the appellant. His sheet-anchor is *Allen* v. *Flood*, which is far from covering this case, and which can only be made to cover it by greatly extending its operation.

P. 538. A threat to call men out by a Trade Union official to an employer of men belonging to the Union and willing to work with him is a form of coercion, intimidation, molestation, or annoyance to them and to him very difficult to resist and to say the least requiring justification. None was offered in this case.

Their Lordships held that the acts done by the defendants were not done in contemplation or furtherance of a Trade dispute between Employers and Workmen within Section 3 of the Conspiracy, etc., Act of 1875. Lord Macnaghten observed—

"So far as I can see there was no trade dispute at all. Leathem had no difference with his men: they had no quarrel with him." . . . There was certainly no trade dispute in the case of Munn."

The House of Lords also was of opinion that the same 3rd Section of the Act of 1875, which provide that in certain cases an agreement or combination is not to be indictable as a conspiracy has nothing to do with civil remedies. Lord Lindley added—

"Nor can I agree with those who say that civil liability depends on the criminality: and that if such conduct as is complained of has ceased to be criminal, it has therefore ceased to be actionable. On this point I will content myself by saying that I agree with Andrews J. and those who concurred with him. It does not follow, and it is not true, that annoyances which are not indictable are not actionable. The law relating to nuisance, to say nothing of the law relating to combinations, shows that many annoyances are actionable which are not indictable, and the principles of justice on which this is held to be so appears to me to apply to such cases as these.

Incidentally Lord Macnaghton explained *Lumley* v. *Gye*.

P. 510. "Speaking for myself I have no hesitation in saying that I think the decision was right, not on the ground of malicious intention—that was not, I think, the gist of the action—but on the ground that a violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognised by law, if there be no sufficient justification for the interference."

1902. "*Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland.*" A Trade Union case of Conspiracy. Giblan, the plaintiff, had been treasurer to the Labourers' Union, and had committed default in his accounts; and a resolution had been passed by the Society that he should be expelled from membership and treated as a non-Unionist. The Unionists followed him from place to place as he obtained employment and struck against him. He now brought his action against the Union and its officers (Williams, the general, and Toomey, a local, secretary), for conspiring to prevent him from getting employment. The questions put by the Judge, Walton, J., to the Jury and their answers were—

1. Did the defendants, William and Toomey, acting together or individually, call out the Union men, or threaten to call them out, unless the plaintiff were stopped?—*Answer:* Yes.

2. If they or either of them did, did they or he do so to prevent or endeavour to prevent the plaintiff from getting employment or retaining his employment?—*Answer:* Yes.

3. Was this done in order to compel the plaintiff to pay the arrears of his defalcations?—*Answer:* Yes.

4. Was it done in order to punish the plaintiff for not paying such arrears?—*Answer:* As to Williams, Yes; as to Toomey, No.

If the preceding questions were answered in the affirmative, then

5. Was what the defendants Williams and Toomey did only to warn the employers that Union men would leave in consequence of Union men being unwilling to work with plaintiff?—*Answer:* No.

6. Was this done in consequence of the Union men objecting to work with plaintiff?—*Answer:* No.

7. Damages?—*Answer:* £100.

On these findings the Judge had to decide whether they disclosed a case of actionable Conspiracy. But he thus guarded against his remarks being extended to the case of acts done by an individual acting alone, not in Conspiracy with others;

It is not necessary in the present case to consider whether the acts complained of would be actionable wrongs if committed by a single individual. I must not be understood to express any opinion that in a case in which a single individual, acting alone, refused to employ another or work for another, even though he did so from the worst and most vindictive motives, and, by so refusing, caused serious damage to such other person in his trade or business, an action would lie against such individual to recover the damages so caused.

As to conspiracy, he said:—

"The act was an act of combination of persons who were induced by persuasion or intimidation or some means—it matters not which—to combine for the purpose of depriving plaintiff of employment. The question, therefore, in the present case appears to be this—whether the concerted action from which the plaintiff undoubtedly suffered damage was an unlawful conspiracy. In considering this question it will be convenient to assume, in the first place, that the Union was responsible for the acts of its co-defendants. On this assumption the members of the Union, acting in concert through their agents Williams and Toomey, prevented the plaintiff from obtaining employment by refusing to work for the employers who employed the plaintiff and by giving notice of such refusal to his employers. Having regard to the decision in the House of Lords in the *Mogul Steamship Co.* v. *McGregor* I do not think this could be an actionable wrong, if it were done for the purpose of protecting or advancing the interests of members of the Union—as, for instance, for the purpose of securing more work and better wages for themselves, even though a necessary consequence of such action would be to injure the plaintiff. On the other hand, having regard to the decision of the House of Lords in *Quinn* v. *Leathem*, I think that it would be an actionable wrong if it was done, not to advance the interests of the members of the Union, except perhaps in some remote and indirect way, but directly and primarily for the purpose of injuring the plaintiff. Applying these principles to the present case, and assuming at present that the members of the Union are responsible at all events for the action of their general secretary, it seems to me that inasmuch as the jury has found that his object was to punish the plaintiff for not repaying the monies which he had misappropriated, the case falls within *Quinn* v. *Leathem* and not within the *Mogul* case."

Eventually he pronounced against the defendant Williams, but in favour of the defendant Toomey, having regard to the finding of the Jury, and also in favour of the Union, on the ground that the rules of a Trade Union do not authorise wrongful acts, and that a Trade Union would not be considered to have authorised its general Secretary to set up and enforce a kind of penal jurisdiction for the purpose of punishing what he and the workmen deemed to be an offence. In so acting, the Secretary was not committing an abuse in the exercise of an authority given him, he was doing something entirely outside the limits of that authority.

The case was appealed, with the result that the Court of Appeal confirmed the liability of Williams for his part in the conspiracy and pronounced Toomey and the union to be liable also. Vaughan Williams, L.J., decided against the defendants, apparently not on the ground that it was a conspiracy to injure, but on the ground that it was a conspiracy to commit the tort of trade interference. He observes:—

The Union, Williams and Toomey were all parties to acts constituting an actionable wrong, viz, interference with Giblan in the exercise of his undoubted Common Law right to dispose of his labour according to his will Then as to the motive of Toomey, it seems to me unimportant, He undoubtedly did an actionable wrong to Giblan in interfering with his right to dispose of his own labour, and the absence of desire to punish Giblan or to recover money from him which he owed does not get rid of a clear actionable wrong, which would arise without proof of actual malice.

In his judgment the action of the union could not be justified because of the findings in fact by the Jury in answer to the fifth and sixth questions, viz., that what the defendants Williams and Toomey did was not a mere warning to the employers that union men would leave on account of union men being unwilling to work with the plaintiff, and was not done in consequence of the union men objecting to work with the plaintiff. It seemed to be a case in which the union and its officers were acting independently of the men.

Romer, L.J., on the other hand, treated the case as one of conspiracy to injure, observing that ever since the decision of the House of Lords in *Quinn* v. *Leathem* it was clear, even if it had not been clear before, that a combination of two or more without justification to injure a workman by inducing employers not to employ him or continue to employ him is, if it results in damage to him, actionable. The Lord Justice laid stress on the numbers at the disposal of the plaintiffs, and on their object being to enforce a debt:

I have simply to determine whether two or more persons, who have special power by virtue of their position to carry out their design, are justified in combining to prevent, and, in fact, preventing, a workman from obtaining any employment in his trade or calling, to his injury, merely because they wish to compel him to pay a debt due from him. In my opinion they are not justified.

The Lord Justice proceeded to say that what is justification must depend upon the circumstances of the case, and might be a question of some difficulty, which, however, might in practice be overcome, and he instanced the charge of Lord Justice FitzGibbon in the case of *Leathem* v. *Craig*. But in the present case there was no difficulty. The findings of the Jury showed that the defendants were acting apart from the workmen of the union, and that their intent was to injure the plaintiff.

The intent of the defendants was to prevent the plaintiff obtaining or retaining employment in order to compel him to pay a debt due from him, and from this the intent to injure the plaintiff appears to me to follow.

Lastly, the Union was liable on the principle stated in *Barwick* v. *English Joint Stock Bank*, L.R. 2, Ex. 259, that the acts were done in the service and for the benefit of the Union.

Lord Justice Stirling began by referring to the statement of the law made by Bowen and Fry, L.J.J. in the Mogul case and recognised by the House of Lords in the same case on appeal and also in *Quinn* v.

Leathem, especially pages 510, 511; 528, 529; 529–531; he concurred with Romer, L.J. The acts which inflicted injury on the plaintiff were done by two persons in combination and amounted to an interference with the plaintiff's rights, no less serious than that which was the subject of the action in *Gregory* v. *The Duke of Brunswick*, 8 M. & G. 295, 993, which was treated as authority in the House of Lords in *Quinn* v. *Leathem*. The 5th and 6th findings of the Jury negatived any suggestion that the acts were done on behalf of the fellow labourers of the plaintiff or in exercise of any rights of theirs to withdraw themselves from an employment in which he took part. At the same time he held the union liable for the acts of Williams and Toomey; he was of opinion in doing what they did they were acting as officers of the union charged with the duty of recovering the missappropriated fund from the plaintiff, and that what they did was a tort, and further that it was committed for the benefit of the union.

Moreover both the Lords Justices recognised the right of a trader, or rather a citizen to be protected from such interference by an individual as though not unlawful in itself was unjustifiable. Romer, L.J., observed:—

I should be sorry to leave this case without observing that, in my opinion, it was not essential, in order for the plaintiff to succeed, that he should establish a combination of two or more persons to do the acts complained of. In my judgment, if a person, who, by virtue of his position or influence, has power to carry out his design sets himself to the task of preventing and succeeds in preventing a man from obtaining or holding employment in his calling, to his injury, by threats or special influence upon the man's employers or would be employers, and the design was to carry out some spite against the man, or had for its object to compel him to pay a debt or any similar object not directly connected with the acts against the man, then that person is liable to the man for the damage consequently suffered. The conduct of that person would be, in my opinion, such unjustifiable molestation of the man, such an improper and inexcusable interference with the man's ordinary rights of citizenship, as to make him liable in an action. And I think this view is borne ont by the views expressed by the members of tha House of Lords who decided the case of *Quinn* v. *Leatham*.

Stirling, L.J., made observations much to the same effect:

These acts were directed to inflicting harm on the plaintiff by preventing him from obtaining or retaining employment and consequently from earning his livelihood in the only way in which he could do so. By those acts Williams and Toomey caused him as serious an injury as could well befall a working man, and that injury resulted in damage. They did those acts from time to time, as the plaintiff succeeded in obtaining employment by going to his employer and threatening that they would resort to the powers which were or were believed to be vested in them as officers of a Trade Union and which involved a resort to the power of numbers in a way which might or probably would cause detriment to the employer. It might, in my opinion, be inferred from the evidence that this course of conduct was intended to be continued until he made terms satisfactory to the Trade Union. Such acts, so persisted in, seem to me to be in the nature of molestation or coercion, and, though they did not involve recourse to physical force, I am far from satisfied that they were not such as to be illegal, even if done by a single individual.

1902. "*Read* v. *Friendly Society of Operative Stone Masons*." An action against a Trade Union for Conspiracy to induce breach of contract. The Union and a master builder had made an agreement (unenforceable in law as being in restraint of trade), with regard to the number, etc., of apprentices who might be taken. Under the impression that an apprentice had been taken contrary to the agreement, the Union threatened the employer with a strike unless he parted with his apprentice. The employer did so, breaking his contract, and the apprentice then brought his action against the Union for conspiring to procure the breach of his indenture of apprenticeship. The threat of a strike consisted in the Society informing the employer that in the event of his refusal to part with the apprentice the members were empowered to take prompt action (which meant to give a two hours' notice to quit). The County Court Judge held that the Union was justified, having acted in a *bona fide* belief in its right. But on appeal by the plaintiff the Queen's Bench Division (Lord Alverstone, Darling, and Channell, J.J.) held that *bona fide* belief by the defendants in their right was not sufficient, nor was the absence of any improper motive. Nothing short of an equal or superior right in the defendant could be an answer. Here the defendants' right seemed to be dependent on an agreement which was unenforceable at law. However (in order to elucidate some doubtful matters of fact), the Court ordered a new trial. Against this order the plaintiff again appealed, and the Court of Appeal (Henn Collins, M.R. Stirling, and Cozens-Hardy, L.J.J.) reversed the decision of the Court below, considering that judgment should have been entered for the plaintiff, and they ordered that to be done, Stirling, L.J., reserving his opinion as to whether the defendants would have been justified if the agreement between them and the employer had been what they believed it to be, that is, valid in law.

With respect to the threat of a strike, the Master of the Rolls thus expressed himself:—

P. 737. The defendants conspired by threats of a formidable character, which they had the means of carrying into effect, to compel a breach by his (the plaintiff's) employers for violation of the contract which the latter had with him, and the only justification they can suggest for their conduct is that Messrs. Wigg and Wright (the employers), had come under an obligation to them—not perhaps legally enforceable if not illegal—not to make such a contract as they had made with the plaintiff. But the justification to be of any avail must cover their whole conduct, the means they used as well as the end they had in view. . . To combine to coerce them (the employers), by threats of the character I have described to break the contract with the plaintiff was in my judgment an illegal act carried out by illegal means. They cannot be in a better position, if the rules are unenforceable, than they would have been had the breach of them given them a legal cause of action. But in such case how can they possibly justify taking the law into their own hands and compelling the opposing litigant by coercion to give effect to their view of a disputed obligation by breaking his contract with the plaintiff?

P. 738. The defendants did knowingly and for their own ends induce the commission of an actionable wrong, and they employed illegal means to bring it about. Such conduct would be actionable in an individual and incapable of justification; *a fortiori* when the defendants acted in concert.

1903. "*The Glamorganshire Coal Co., Ltd.* v. *The South Wales Miners' Federation*. Action against a Trade Union for inducing breach of contract. The Executive of the Federation had ordered stop days, and the workmen had taken them, in breach of contract. The Coal Company sued the Federation for inducing and also for conspiring to induce breach of contract. The case was tried before a Jury, but after three days the Jury was discharged, and all questions of law and fact, as well as the ascertainment of the damages, if any, were, by consent, left to the judge, Mr. Justice Bigham.

The Judge pronounced in favour of the defendants. He held that, to found any Conspiracy, it was incumbent on the plaintiffs to prove malice. But, in his opinion, in the case before him there was no malice. The defendants were under an obligation to advise the workmen, and they had honestly advised for the good of the workmen and without any intent to injure the employers.

The plaintiffs appealed, and the Court of Appeal reversed the decision of the Judge, but not unanimously.

Vaughan Williams, L.J., arrived at the same conclusion with Mr. Justice Bigham, but not by the same course of reasoning. He first premised that the Judge's decision did not involve any such proposition as that the workmen have a right to break their contracts because each one of them may think honestly

that it is either for his individual advantage or for the advantage of the workmen collectively that the contracts should be broken. Each workman would, of course, be liable to be sued for his own breach of contract. But the question was whether an action would lie for inducing others to break their contracts or for Conspiracy so to induce. As to this he regarded the inducement to break a contract only as a *prima facie* tort to which the defendant might plead as a just cause or excuse that it was his duty to advise (much as a defendant in a libel suit may plead privilege); and that thereupon it is for the plaintiff (like a plaintiff in a libel suit) to set up malice as negativing the plea. In the present case he considered the plaintiffs had failed to prove malice; the defendants had honestly advised in fulfilment of their duty. He also held that the same rule, which applied in a case against an individual defendant, as to evidence of malice being available only for the purpose of rebutting a plea of *bona fide* conduct, applied also in cases of Conspiracy. The plaintiff in a suit of Conspiracy was under no obligation to prove malice in the first instance. What he had to prove was a Conspiracy to commit an actionable wrong. For:—

Prima facie a combination to interfere with the civil rights of another—whether it be his right to full freedom to dispose of his own labour or his own capital or any other right of citizenship—is an unlawful combination, because such interference, if carried into effect, is an actionable wrong, and it is this fact, and not any mere malicious motive, which constitutes the combination a Conspiracy.

Romer, L.J. (with whom Stirling, L.J., concurred) delivered the judgment of the Court in favour of the plaintiffs. He declined to follow the discussion raised by Vaughan Williams, L.J., as to malice. Nor did he deal with the case as on the ground of Conspiracy, that word not even occurring in the judgment. He dealt with it as a tort by individuals. The defendants had not only advised but procured a breach of contract, which procuring was a violation of the law, and for this they had no justification. In actions for inducing breach of contract the question of justification might sometimes be a matter of difficulty, involving such considerations as the nature of the contract broken; the position of the parties to the contract: the grounds for the breach: the means employed to procure the breach: the relation of the person procuring the breach to the person who breaks the contract, and also, the Lord Justice thought the object of the person procuring the breach. But all that could be alleged in the present case, viz.: the absence of malicious motive on the part of the defendants, and the *bona fide* belief that breach of the contract would be advantageous to the persons induced or the persons inducing, would not amount to justification.

An Appeal was made to the House of Lords but rejected unanimously. Their Lordships distinguished the case from the case which they declined to consider where possibly the duty of advising might be accepted as justification for advising breach of contract. In the present instances the Union had not only advised, they had ordered and procured the breach of contract. Absence of malice afforded no just cause or excuse, and Lord James of Hereford expressly refused to concur with Bigham J. that to support an action for procuring a breach of contract it is essential to prove actual malice. Lord Lindley in the course of his judgment made the following observations with respect to Conspiracy and malice:—

"It is useless to try and conceal the fact that an organised body of men working together can produce results very different from those which can be produced by an individual without assistance. Moreover laws adapted to individuals not acting in concert with others require modification and extension if they are to be applied with effect to large bodies of persons acting in concert. The English law of Conspiracy is based upon and is justified by this undeniable truth. But the possession of great power, whether by one person or by many, is quite as consistent with its lawful as with its unlawful employment: and there is no legal presumption that it will be or has been unlawfully exercised in any particular case. Some illegal act must be proved to be threatened and intended or to have been committed before any Court of Justice in the United Kingdom can properly make such conduct the basis of any decision. These remarks are as applicable to Trade Unions as to other less powerful organisations. Their power to intimidate and coerce is undoubted; its exercise is comparatively easy and probable, but it would be wrong on this account to treat their conduct as illegal in any particular case, without proof of further facts which make it so. . . . Your Lordships were invited to say that there was a moral or social duty on the part of the officials to do what they did, and that as they acted *bona fide* in the interest of the men and without any ill-will to the employers, their conduct was justifiable, and your Lordships were asked to treat this case as if it were like a case of libel or slander on a privileged occasion. My Lords, this contention was not based upon authority, and its only merits are its novelty and ingenuity. The analogy is in my opinion misleading; and to give effect to this contention would be to legislate and introduce an entirely new law and not to expound the law as it is at present. It would be to render many acts lawful which, as the law stands, are clearly unlawful. My Lords, I have purposely abstained from using the word malice. Bearing in mind that malice may or may not be used to denote ill-will, and that in legal language presumptive or implied malice is distinguished from express malice; it conduces to clearness in discussing such cases as these (*a*) to drop the word malice altogether, and to substitute for it the meaning which is really intended to be conveyed by it. Its use may be necessary in drawing indictments; but when all that is meant by malice is an intention to commit an unlawful act, and to exclude all spite or ill-feeling, it is better to drop the word and so avoid all misunderstanding.

1902. *Bulcock* v. *St. Anne's Master-Builders' Federation.* This was an action against an employers association and its officials for circulating black lists. The Lancashire and Cheshire Building Trades Society of Masters was a central federation, comprising various affiliated societies, one at St. Anne's, another at Lytham, and so on. One of the rules of the federation was that in every case of dispute no member should employ any workman who was on strike or locked out from the workshop of another member. It was also a rule that members should not supply material or labour to any person who by his action was rendering himself obnoxious to the federation. A strike or lock-out took place in the shops of a master belonging to the St. Anne's branch, and that branch sent to the central federation the names of all those discharged, for the purpose of stopping them if they worked for any federated employer. The plaintiff, who was a workman and a member of the Amalgamated Society of (Operative) Carpenters and Joiners, had been one of those who had been working under the St. Anne's employer, and on the strike taking place went to work for Thompson and Brierley, who belonged to a similar society of masters at Lytham. The St. Anne's Society, hearing this, called upon the Central Federation of Lancashire and Cheshire to use their influence to induce Thompson and Brierley to discharge the plaintiff. The federation did then make a communication to Thompson and Brierley, and they in their turn wrote to their foreman, and told him that the plaintiff had better be paid off or else they (Thompson and Brierley) would get into trouble. The plaintiff was discharged accordingly, and then brought his action against the St. Annes Society of Masters and three of its officials for procuring him to be discharged. The County Court judge held there was no evidence of any act done with an intention to injure the plaintiff, or of anything except acts by defendants to further their own purposes. The plaintiff appealed to the Queen's Bench Division, and the Court, consisting of Lord Alverstone, C. J., and Wills, and Channell, J.J., held that the County Court Judge had come to a correct conclusion for correct reasons. If the defendants were to be liable the case had to be brought within the rules laid down by Lord Macnaghten in *Quinn* v. *Leathem*, 1901, A.C., p. 511. But the evidence fell far short of that. Thompson and Brierley had dismissed the plaintiff, not in consequence of threats, though, probably, they had in their mind that to continue to employ him might get them into trouble. What they had done was this: within their legal rights they did not continue to employ the plaintiff. There was no evidence of any actionable wrong.

1903. *Howden* v. *Yorkshire Miners' Association.* Application to prevent strike-pay being paid out of Trade Union Funds contrary to rules of the Union. The particulars of this case are given *supra p.* 72.

1905. *Denaby and Cadeby Main Colleries Limited* v. *The Yorkshire Miners' Association and others. Times'* January 28, 29, 30; February 2, 3, 4, 5, 6, 9, 10, and 15, 1904; May 20, 1905. Action against a Union for conspiring to induce breach of contract, to prevent employment and to maintain a strike by intimidation and illegal payment of strike-pay. The plaintiffs were the owners of the Denaby and Cadeby Main Collieries. The defendants were the Yorkshire Miners' Association (a Trade Union with about 150 branches and 63,000 members) the trustees of the Trade Union, and two delegates Nolan and Humphries, of the Denaby and Cadeby Branches. The action arose out of a strike, and was for a Conspiracy to injure the plaintiffs, damages being claimed for conspiring to induce the workmen to break their existing contracts, and for conspiring to induce them not to enter into new contracts, and also, as a separate cause of action, for conspiring to maintain the strike by unlawful means, embracing intimidation, molestation, and the illegal payment of strike money. By the terms of their employment the workmen had to give a fortnight's notice, and by the rules of the Union strike pay from the Union funds was not permissible unless the strike had been approved by the central council of the Union, and then was not payable until after the lapse of six days. On the 29th of June, at the instigation of the branch delegates, the workmen struck without notice, thus breaking their contracts with their employers, and as the strike had not been authorised by the council they were not entitled to strike-pay, and were refused it. On 17th July, in order to put themselves right with the council, the men offered themselves again to work with the intention of immediately giving a fortnight's notice, and on its expiration of going out again on strike. But on the employers insisting on the men re-signing the book of rules for the colliery (which contained a rule sanctioned by the Secretary of State to which the workmen objected) the men did not actually return to employment. On the 24th July the council resolved to give strike pay as from 17th July, and continued to do so until the decision in the case of *Howden* v. *Yorkshire Miners' Association*, declaring that under the circumstances the payment of strike pay was contrary to the rules and illegal.

At the trial before Mr. Justice Lawrance certain questions were left to the Jury, which with their answers were as follows:—

(1) Did the defendants, Nolan and Humphries, or either and which of them unlawfully and maliciously procure the men to break their contracts of employment by going out on strike on June 29th without notice?—*A.* Yes.

(2) If you answer the first question in the affirmative, then were Nolan and Humphries, or either and which of them, in so doing, purporting to act as agents of the Association and for its benefit?—*A.* Yes.

(3) Did the members of the Committee of the Denaby and Cadeby branches, or any of them, unlawfully and maliciously procure the men to break their contracts of employment by going out on strike on June 29th, without giving notice?—*A.* Yes.

(4) If you answer the third question in the affirmative, then were the members of the Committee in so doing, purporting to act as agents of the Association and for its benefit?—*A.* Yes.

(5) Did the defendants' Association by its Executive Council, or by its officials, ratify the acts of Nolan and Humphries or of the members of the Committees, in so procuring the men to break their contracts?—*A.* Yes.

(6) Did the defendants' Association, by its officials or by the members of the Committees of the Denaby and Cadeby branches, maintain or assist in maintaining the strike by unlawful means; that is to say (*a*) by molesting or intimidating men who were working for the plaintiffs with a view of inducing them to cease from so working?—*A.* Yes. (*b*) By inducing or attempting to induce men, who were willing to enter into contracts of service with the plaintiffs or to work for them to refrain from so doing?—*A.* Yes. (*c*) By the grant of strike pay against the rules of the Association?—*A.* Yes.

(7) Did the defendants (the officials and members of the Executive Committee of the Union), or any and which of them maintain or assist in maintaining the strike by unlawful means—that is to say, by any and which of the above means?—*A.* Not personally, but as members of the Association.

(8) Did the defendants or any and which of them unlawfully and maliciously conspire together and with workmen formerly in the employ of the plaintiffs to molest and injure the plaintiffs in the carrying on of their business, and were the plaintiffs so molested and injured?—*A.* Yes.

Judgment was accordingly given for the plaintiffs. The defendants (other than Nolan and Humphries) then applied for judgment or a new trial on the ground that there was no evidence to go to a Jury, that the verdict was against the weight of evidence, and that the Judge had misdirected the Jury.

The Court of Appeal, consisting of the Master of the Rolls and Mathew and Cozens-Hardy, L.J.J., were unanimous in holding that the Union were not responsible for the initiation of the strike; by the rules the Branch Officials were not constituted the agents for the Union and the Union did not ratify the acts of the Branch Officials in bringing about the strike. But they differed with regard to the maintenance of the strike. In the opinion of the Master of the Rolls there was evidence to go to the Jury that the executive of the Union—being in close touch by reason of paying strike pay weekly and otherwise with the Branch Officials and the strikers—were privy to the intimidation and molestation, and generally to the illegal conduct of the strike. The L.J.J. took a contrary view. Accepting the finding of the Jury that the strike was continued and maintained by the Branch Officials by pickets and by inducing the strikers not to return and other men not to enter into the service of the employers, there was nothing illegal in this, except so far as it had been accompanied by illegal conduct, such as molestation and intimidation. Of this misconduct the Branch Officials had been guilty but there was no evidence that the Union Officials had either directed or sanctioned it. There remained the question of the payment of strike pay. As to this, by the 17th July, from which date the payment was ordered on the 24th, the notices had expired, the contracts were determined, and the strike was a lawful strike. On principle it was not easy to say how a gift of money to strikers by a man or a body of men could involve liability, even though the strikers might, without the sanction of the subscribers, be guilty of molestation and intimidation in the conduct of the strike. Nor would the mere knowledge of the subscribers that such unlawful acts had been used or were likely to be used by the strikers alter the legal position. Nor could it make any difference that the subscribers being trustees had taken the money out of a trust fund contrary to the conditions of the trust. That would be a breach of trust as between them and their beneficiaries, but could give no further rights to the employers, to whom the source from which the fund was derived was a matter of indifference and could not found a charge that the subscribers had maintained the strike by unlawful means or that they had conspired to injure the plaintiffs. The appeal therefore was allowed.

1905. "*Mc Elrea v. United Society of Drillers and others.*" Action against Trade Union for conspiring to prevent employment by coercion. This was an action brought by the plaintiff, formerly a member of

the Trade Union, against the Trade Union, its trustees, and Lindsey, its secretary, for unlawfully and maliciously conspiring together to molest and injure him in his business by coercing his employers by threats and intimidations from employing him. The plaintiff as a member had complained to the branch authorities of sick pay having been improperly paid to another member. The branch referred the complaint to the Central Executive, who dismissed it and fined the plaintiff 5s. as the cost of the inquiry. The plaintiff refused to pay, and as the fine together with other arrears due from him made up an amount of debt which by the rules justified expulsion, the Executive expelled him. What followed was disputed. The evidence for the plaintiff was aimed at showing that Lindsey, the secretary, arranged with the Executiv to go to Lester, the manager of a shipbuilding yard, that he did go, and threatened Lester, and that Lester consequently abstained from employing the plaintiff. For the defendants it was admitted that Lindsey did interview Lester, but it was denied that he did so to coerce and all the rest of plaintiff's evidence was contradicted. The Judge summed up to the effect that if the case was that Lester thought it better not to have non-Union men assisting with men who belonged to the Union the defendants could not be held liable, but if the Jury thought there was an understanding between Lindsey and Lester that McElrea should be kept out, that would amount to coercing by threats and intimidation to prevent McElrea from getting employment. In order to find an act of coercion by Lindsey, the Jury must find that what was said to Lester had an effect upon his mind and coerced him to cease employing McElrea. The plaintiff could not succeed in his action of conspiracy unless the Jury found that the executive council or branch council had agreed with Lindsey that he should use his power on behalf of the Society to prevent McElrea from obtaining work. The case for the plaintiff was extremely slender, no evidence having been given of any resolution having been passed by the executive council, and no member of that body having come forward to speak to anything having been done with a view to prevent McElrea from obtaining employment. The Judge left the following questions to the Jury :—

(1) Did Lindsay and the Society conspire to molest or injure McElrea by coercing his employer by means of threats or intimidation to cease from employing him ? (2) If so did McElrea suffer any damage ? (3) If McElrea suffered damage, to what amount was he entitled ?

The Jury answered questions (1) and (2) in the affirmative and assessed the damages at £125. On appeal, the Court, consisting of the Master of the Rolls and Mathew and Cozens-Hardy, L.J.J. gave judgment for the defendants. The Master of the Rolls said that the alleged cause of action in the case was Conspiracy, which involved joint action on the part of two or more persons. In order that the plaintiff might maintain his count for Conspiracy, it was necessary for him to show that the Unions were parties to acts done on their behalf by the other defendant. In his opinion that part of the case broke down. There was no evidence implicating the Union itself as distinct from the individual members of it, in this matter, and the rules of the Union forbade the making of such implication. But the count for Conspiracy was also against an individual, viz., the Secretary, Mr. Lindsey. He thought that what the law called malice was an ingredient which must exist in this cause of action. The burden of proving the existence of it was on the plaintiff and in his opinion there was some evidence of malice in this case fit to be considered by the Jury, and so far as that was concerned the case was properly left to the Jury. But the plaintiff had to prove not only that Lindsey was actuated by malice, but also that he employed coercion with the result that the person coerced refused to continue the plaintiff in his employment. There were two conditions, first, the means, viz., coercion, and secondly the result, viz., the influence effected by the coercion producing loss of employment. Unfortunately for the plaintiff he was obliged to go into the enemy's camp to procure evidence He called as a witness Mr. Lester, the man who was alleged to have been coerced. He was the foreman in the yard where the plaintiff was employed, and it was clear that he was alive to the difficulties which arose when non-Union men were introduced among Union men. He said, in his evidence, that as the men in the yard were Society men, he was afraid friction might arise if non-society men were introduced. In his opinion the plaintiff failed to prove coercion, and the evidence called by him negatived the influence which coercion was to effect. The defendants therefore were entitled to judgment.

1905. *Airey* v. *Weighill.* Action against a Trade Union for conspiring to prevent employment. The plaintiff was a stonemason who was formerly a member of the Friendly Society of Operative Stone Masons. On becoming a foreman he ceased to be a member of that Society and became a member of a foremen's Union. In order to induce him to continue to be a member of the Operative Stone Masons' Society the operatives at an establishment in Sunderland where he was appointed foreman struck, they being at liberty to do so on giving an hour's notice. In consequence the plaintiff was discharged. He then brought his action, making as defendants (1) the trustees of the Central Operative Society ; (2) the president and secretary of the Sunderland Branch ; and (3) certain of the workmen who had struck, amongst whom was the president of the branch. The plaintiff alleged that the defendants who had struck had unlawfully, wrongfully, and maliciously procured or induced the employer not to continue to employ the plaintiff, and in the alternative that the same defendants had, with intent to injure the plaintiff, unlawfully, wrongfully, and maliciously together, and also with others conspired to procure and induce the employer not to continue to employ the plaintiff, and that the plaintiff had thereby suffered damage. The plaintiff claimed damages against the defendants, who were the trustees of the Central Society and the defendants who were president and secretary of the branch on behalf of themselves and all other members of the Society, and against the defendants who were president and secretary of the branch on their own behalf, and the defendants who had struck. He also claimed an injunction to restrain the Society or its agents from interfering with any persons with a view to causing them to break their contract with the plaintiff or to cease to employ him or to abstain from entering into contracts with him, and from otherwise molesting or interfering in any manner with the plaintiff following his calling. Evidence was given that on 21st March the lodge unanimously resolved that there should not be a strike, but that on the next day the men struck by the order of Rawson, the president of the lodge, and Armitage, the shop steward. The questions put to the Jury and their answers were :—

(1) Did Rawson and Armitage order the men to send in their notices to Mr. Shaftoe (the employer) to compel him to get rid of the plaintiff ?—*A.* Yes.

(2) Did they act—as it is admitted they did act—to press the plaintiff to pay 2s. 6d. to their Society and to get him dismissed from his work if he did not join ?—*A.* Yes.

(3) Did they act in pursuance of orders from the lodge or with the approval of the lodge ?—*A.* Yes with the approval of the lodge, in view of the fact that from 15 to 17 members, in addition to the president, out of the 40 present at the meeting on March 21st acted in direct opposition to the unanimous vote of the lodge on that date.

The Jury added that the men did not act with a malicious intent to injure the plaintiff apart from forcing him to join the Society. The Jury found for the plaintiff and assessed the damages at £8. The defendant's Union then applied to the Court of Appeal for judgment in their favour or a new trial. The Master of the Rolls construed the third Answer of the Jury to mean that there had been no order of the lodge to strike, but that the strike had been with their approval, this reason of the Jury being that they

did not believe the evidence for the defendants that there had been a *bona fide* resolution of the lodge not to strike.

The Court of Appeal pronounced against the plaintiff. The fund out of which strike pay was paid was part of the funds of the Society, and the rules must of necessity safeguard the funds of the Society against unauthorised acts of the lodges. In the absence of an express rule the Court would not presume that a lodge had the right to draw upon the funds of the Society for the purpose of supporting strikes. The burden to show a rule conferring the right was on the plaintiff and he had not discharged this burden. Again, even if the lodge had the power it would have been necessary in order to make the Union funds responsible for the acts of the lodge for the plaintiff to show they had exercised it by a resolution of the lodge authorising the strike. This also the plaintiff had failed to do.

Accordingly, without entering into the question whether in any case the acts done would have been a cause of action the Court ordered judgment to be entered for the defendants.

1904. *Cullen* v. *Elwin, and others.* Application by plaintiff to obtain funds to which he claimed to be entitled under rules of Trade Union. The plaintiff, a member of the Nottingham Branch of the Amalgamated Society of Tailors and Tailoresses, which was a registered Trade Union, had been in receipt of a superannuation allowance. The rate under which the allowance had been granted was then altered without his consent and the Society refused to pay him any further. The applicant accordingly sued the Society. Held by the Court of Appeal in accordance with *Rigby* v. *Connol* and *Swaine* v. *Wilson* that the application was for a direct enforcement of one of the agreements mentioned in Section 4 of Trade Unions Act, 1871, and that, the main purposes of the Society being in restraint of Trade, the Court was precluded from giving any assistance..

1905. *Ward, Lock & Co., Ltd.* v. *Operative Printers' Assistants' Society and another.* Action against Trade Union for conspiring to induce breach of contract and to molest. The plaintiffs carried on a printing business in which they employed non-Unionists. Some of the employees joined the Union, and plaintiffs, knowing or supposing that they could only remain on the condition of receiving the standard rate of wages recognised by the Union, dismissed them. The secretary of the Society protested, and, according to the evidence for the plaintiffs, said he would, by offering higher wages, draw off any men who might be engaged in the place of those who had been discharged. The Union then picketed the works, and some of the fresh workmen who were taken on broke their contracts and left, or wasted time, or spoilt materials. The plaintiffs brought their action against the Trade Union and its secretary for conspiring to induce their workmen to break their contracts, and applied for an injunction to restrain the defendants from picketing the premises for the purposes of preventing persons from working for the plaintiffs.

Mr. Justice Darling left the following questions to the Jury :—

(1) Did the defendants or either of them watch or beset or cause to be watched or beset the premises of the plaintiffs or the approaches thereto so as to cause a nuisance to the plaintiffs ?

(2) Did they do so for the purpose of compelling the plaintiffs or any person or persons in their employ to abstain from doing or to do any act which they or he had a legal right to do or abstain from doing ?

(3) Did the defendants or either of them cause or procure any of the persons following (A., B., C., etc.) to commit a breach of contract ?

(4) Did the defendants or either of them so cause or procure men in the plaintiffs' employ to retard the plaintiffs' work or spoil or injure the plaintiffs' work or material ?

(5) Did the defendants conspire and combine with the persons to procure the commission of the unlawful act set out in the previous question ?

The Jury answered all the questions in the affirmative and assessed the damages at £650.

NOTE BY MR. ARTHUR COHEN, CONCURRED IN BY MR. SIDNEY WEBB, TO SIR GODFREY LUSHINGTON'S REPORT.

I entirely agree with the account given by Sir Godfrey Lushington of the history of the law of conspiracy. In my opinion it is consistent with all the statements contained in the Majority Report, and indeed goes very strongly to confirm the recommendations therein contained. It was the vagueness and uncertainty of the law of conspiracy which gave rise to the legislation of 1875, and the full account given by Sir Godfrey Lushington of the more recent dicta judgments and decisions show in a most striking manner that the law of criminal conspiracy is at the present moment even more vague and uncertain than it was in 1875.

It is to be observed that the Act of 1875 leaves the law as to sedition, offences against the Sovereign and the State, unlawful assemblies, riots and breaches of the peace wholly untouched, and further, that according to our recommendation any person who, with a view to coerce another, acts in such a manner as to cause reasonable apprehension in the mind of another person that violence which used against him, his wife or family, or that injury will be done to his property, will be guilty of a criminal offence, and that therefore persons who conspire to do such acts will be guilty of criminal conspiracy. If any further provisions be required to check the evils resulting from oppressive combinations, whether of agitators, workmen, capitalists, or employers, an adequate and proper remedy cannot, in my opinion, be found in recent data or decisions which leave it wholly undetermined what constitutes an oppressive combination or a reasonable justification; it can be obtained only by legislative provisions carefully framed for that purpose.

(Signed) ARTHUR COHEN.
SIDNEY WEBB.

REPORT BY SIR WILLIAM T. LEWIS, BART.

MAY IT PLEASE YOUR MAJESTY,

I have the misfortune to dissent from the Recommendations which my colleagues have made in the Majority Report, and I therefore ask leave to make the following Report:—

1. Owing to the dissatisfaction on the part of the Trade Unions of workmen with the law as at present declared, we were appointed to inquire into the subject of Trade Disputes and Trade Combinations, and as to the law affecting them.

2. The Trade Unions of workmen unanimously refused to give evidence before us as to the causes of their dissatisfaction with the existing law.

The representatives of the employers on the other hand gave evidence which supported the law as at present declared, though in many instances they considered that the law as to "picketing" required strengthening for the better protection of the workmen and their families.

3. The Royal Commission to inquire into the working of the Master and Servant Act, 1867, and the Criminal Law Amendment Act, 1871, found itself in a similarly unfortunate position. The Commission, however, took the evidence from the employers which was readily given, although the representatives of the employed, then as now, refused to come forward to state their grievances.

The following extract from their Report issued in 1875 is instructive:—

"Considering that the discussion on the merits of the Master and Servant Act had been mainly brought about by the objections made against it by the representatives of the working men, and their complaints as to its operation, we deemed it highly desirable to have any facts brought to our attention on which such objections and complaints might be founded. We addressed ourselves to the secretary of the London Trade Union Congress Parliamentary Committee as representing the interests of the employed, as also to certain associations of employers of labour who had volunteered to give evidence of the working of the Act, inviting them to furnish us with evidence in relation to the Act, and to any complaints they were prepared to advance either to its principle or to its administration.

"In reply to such application, very full information as to the working of the Act and as to the necessity for it has been afforded to us by many of the employers to whom we addressed ourselves; but we regret to say that, in consequence of the decided opposition to the inquiry made by the representatives of the employed, with some few exceptions, we have been unable to obtain the same or similar information from the employed or their representatives. The secretary of the London Trade Union Congress Parliamentary Committee, which represents a very great number of the employed, in reply to the application addressed to him requesting him either himself to give, or to assist us to obtain, evidence of the working of the Act, declined to assist the Commission in its labours in any way, and only forwarded to us a copy of a resolution passed by that Committee to the same effect."

4. By the terms of our reference, our inquiry was not only into the law affecting trade disputes, etc., but also into the subject.

5. My colleagues, who all have the advantage of being lawyers, have dealt most ably with the law affecting trade disputes. Most of our witnesses, however, have dealt with the subject and conditions of trade disputes and only incidentally with the law affecting them, and this evidence has appealed very strongly to me, confirmed as it is by my own many years' personal experience of trade disputes.*

6. It is with deep regret that I find from the Majority Report and the Recommendations therein that the evidence of our witnesses has not been so conclusive to my colleagues who sign that Report as it appeared to me. I am

* This personal experience, I may say commenced with a practical engineering apprenticeship as a working apprentice, then as an assistant engineer for nine years, and then as manager of collieries and engineering works, and for about thirty years as a large employer of labour, in addition to being general manager of railways, docks, collieries, estates, and manufacturing works, and during twenty-five years of that time as Chairman of Associations which controlled the wages and arrangements of about 100,000 workmen, during which time I have personally had to deal with a large number of disputes, strikes and locks-out in various trades.

glad to note that Sir Godfrey Lushington in his Report agrees with me to the extent of dissenting from five out of the nine Recommendations of the Majority Report. Most of the Recommendations seem to me to be directly contrary to the evidence, and under these circumstances I have no alternative but to prepare a separate Report, giving my assent where possible, and the reasons of my dissent where I feel compelled to disagree.

7. I agree with the following Articles of the Majority Report, viz., 1 to 35 (inclusive); 39 to 47 (inclusive); the first part of 48 (to the end of line 20) which deals with the objections to Mr. Whittaker's Bill and with the evidence as to "picketing"; and with 49 to 57 (inclusive). I also cordially agree with the reference, in Article 67, to the services of our Secretary, Mr. Hartley B. N. Mothersole.

8. I express no opinion on the legal points discussed in Articles 37, 58, and 59, of the Majority Report.

9. I dissent most strongly, for the reasons stated in dealing with the specific Recommendations of the Majority Report, from the following Articles in the Majority Report, viz., 36 and 38; the latter part of 48 (from line 20 to the end); and 60 to 65 inclusive.

10. I now proceed to deal with the specific Recommendations of the Majority Report contained in Article 66.

Recommendation I. of the Majority Report.

(1) "That an Act should be passed to declare Trade Unions legal associations."

The Trade Unions Act of 1871 enacted that the purposes of any Trade Union should not by reason merely that they were in restraint of trade be unlawful.

The object of the Acts of 1871 and 1876 was to legalise combinations for trade purposes and acts done in furtherance of trade disputes. If the purposes of a Trade Union are lawful under these Acts, then, as I understand, the Trade Unions are lawful. Lord Justice Smith in *Lyons* v. *Wilkins* (1. Ch. 1896) at p. 833, states "There is no doubt that a Trade Union now, as long as it carries on its affairs up to a certain point is as legal as any other community or combination in the Kingdom."

A "Trade Union" as defined by these Acts includes a combination of employers equally with a combination of employed.

There is no demand on the part of employers, as far as I am aware, for any Act to declare these combinations legal associations; there certainly was no evidence given before us calling for it; no case, in my opinion, has been made out for this enactment. I cannot assent to this recommendation, and I am glad to note that Sir Godfrey Lushington also dissents from it.

Recommendation II. of the Majority Report.

(2) "That an Act should be passed to declare strikes from whatever motive or for whatever purposes (including sympathetic or secondary strikes), apart from crime or breach of contract, legal, and to make the Act of 1875 to extend to sympathetic or secondary strikes."

The right to strike, *i.e.*, a simultaneous refusal by workmen to sell their labour, was evidently conceded by Lord Lindley in his judgment in *Quinn* v. *Leathem*, where he says:—

"Intentional damage which arises from the mere exercise of the rights of many is not, I apprehend, actionable by law as now settled."

Askwith, 571. Mr. Askwith in his evidence, which is recommended by the Majority Report (Par. 10) to the perusal of all who wish a clear and exhaustive summary of the case law, definitely stated that workmen had the right to strike which was *per se* legal, *i.e.*, that they might combine to leave work without breaking contracts.

None of the witnesses who came before us suggested that workmen should be deprived of this right, the legality of which they fully admitted. I agree that workmen now enjoy the right to strike, but I object most strongly, to the Recommendation that strikes from whatever motive or for whatever purpose should be definitely legalised by Act of Parliament. A particular set of circumstances may take a strike out of the category of lawful acts into the category of unlawful acts. The manner and way in which an act is committed might make what would otherwise be a perfectly lawful act an engine of cruel oppression, and one against which the law should provide a remedy. I think it should be left to the Courts to decide, as at present, in each particular case the legality or otherwise of the conduct of the strikes. Rhodes, 2189. Tilling, 2386. Wright, 3137.

I agree with Mr. Webb's comments in his Memorandum, as to the effects of a strike which

"Necessarily involves so much dislocation of industry; so much individual suffering; so much injury to third parties; and so much national loss."

The tendency of an Act, as recommended, would be to facilitate strikes, which would be a very grave responsibility for Parliament to assume. *Many of our witnesses have been in favour of absolutely prohibiting strikes against non-Unionists, and I should strongly support such legislation, if such should be found practicable. In any case, I am most strongly opposed to any amendment of the law relating to Trade Unions which would increase the facilities already existing for interfering with the liberty of any workman. The position of non-Union men is one of great difficulty owing to the injustice with which they have to contend. Not only is their liberty to work during a strike interfered with, but attempts have been made to prevent non-Union men obtaining employment even when no dispute exists, and there are many instances in which they have been prevented from obtaining house accommodation and the necessaries of life, in order to compel them to join a Union. In some trades an employer is not at liberty, on pain of losing his Union men, to employ non-Union men at all, even as foremen. The workmen have the right to work or not as they please, they have unquestionably the right to belong to a Trade Union or not as they please, and their right to earn their living should not be in any way dependent on their attachment to a society. Although the proportion of Unionists to non-Unionists is only one to ten, the minority, by means of their combinations and the manner in which they conduct themselves towards non-Unionists, are able to, and do in fact, exercise a cruel tyranny over the unorganised non-Unionists. † The evidence we have had, and which the Trade Unionists have not come forward to deny, is overwhelming on this point

Noble, 2410. Millar, 3460. Badger, 3719.* Bagley, 4042. French, 4778. Hadden, 4752. James, 4704. Kenshole, 1815. Lockhead, 3658. Millar, 3262. Rudd, 3477. Thomson, 2998. Tilling, 2369. Watson, 3812. White, 2057. Beasley, 1012, 1055, 1362, 1396. Baird, 1589. Kenshole, 1768.† White, 2027. Noble, 2410. Askwith, 2678. Browne, 2935. Thomson, 2982, 2998. Wright, 3060. Millar, 3360. Rudd, 3477. Lockhead, 3606. Newman, 3671. Badger, 3719. Liscombe, 3753. Heenan, 3791. Watson, 3831. Inglis, 3911. James, 4739. Hadden, 4752, French, 4778. Benham, 4980. Stoddart, 5089. Lawes, 5376.

As regards the Recommendation that secondary strikes should be legalised by Act of Parliament, the Majority Report (Par. 62), states that :—

"The majority of the employers examined by us . . . agreed that there was no valid reason for drawing a distinction between secondary and other strikes."

I think that a statement to the following effect would more accurately represent the facts :—

"The majority of the employers not being lawyers failed to grasp the niceties of legal points on which they were cross-examined" :—

as it is an undeniable fact that the witnesses examined by us were unanimous in desiring that the decisions in *Lyons* v. *Wilkins* and *Quinn* v. *Leathem* should be maintained. It is also a fact that Mr. Askwith, whose evidence is specially commended in the Majority Report (Par. 10), stated that

"If the holding of the Lord Justices (in *Lyons* v. *Wilkins*) is correct with regard to Schoenthal, certainly secondary strikes are illegal, it seems." Askwith, 225.

Mr. Askwith also stated :— Askwith, 233–235.

"The tendency of recent cases is to show that a combination to prevent others from working or to induce them to strike is *prima facie* illegal and accordingly requires justification. Failing such justification a Trade Union whose officials take action of the character I have mentioned, would be liable to be restrained by injunction and mulcted in damages." Askwith, 585.

Mr. Askwith also quoted the following words of Lord Justice Kay in *Lyons* v. *Wilkins* :—

"Still more clearly is it illegal to induce a man or to prevent a man in the position of Schoenthal from working for the plaintiff by calling out the workmen of that man, and inducing them not to work for him, that being done for the purpose of putting pressure both upon Schoenthal and upon Messrs. Lyons, by preventing Schoenthal from working for Messrs. Lyons. I cannot read Section 7 without seeing distinctly that those things are not permissible by this Act of Parliament, and no Act of Parliament can be referred to which makes them lawful."

It appears to me to be clear from Mr. Askwith's evidence and the quotations he gave from the judgment in *Lyons* v. *Wilkins*, that secondary strikes are illegal

It is equally clear that the evidence of our witnesses was unanimous in favour of maintaining the decision in *Lyon's* v. *Wilkins*.

I therefore consider that the Recommendation to legalise "secondary strikes" by Act of Parliament is in direct opposition to all the evidence, and I most strongly dissent from it.

Recommendation III. of Majority Report.

(3) "That an Act should be passed to declare that to persuade to strike i.e., to desist from working, apart from procuring breach of contract, is not illegal."

The Recommendation to definitely legalise persuasion to strike by Act of Parliament appears to me a most dangerous, and insidious proposal. Lord Lindley, then Master of the Rolls, in his judgment in *Lyons* v. *Wilkins* expressly stated that :—

"Persons may be peaceably persuaded provided that the method employed to persuade is not a nuisance to other people."

The law, as at present, was clearly declared by the then Attorney-General (Sir R. Finlay) in the House of Commons (*Hansard* May 14th, 1902) who in effect said :—

"Peaceable persuasion by itself never imposes any liability, civil or criminal : if peaceable persuasion is accompanied by acts which constitute a nuisance at common law, the immunity does not extend to it. In the cases which have arisen the question has not been peaceable persuasion by itself but peaceable persuasion coupled with what is known as watching and besetting the house of the person to be affected by it."

The Majority Report itself at Article 46, states :

"It is sometimes represented that workmen are thus punished for merely peacefully persuading. "But this is not so. No workman has ever been punished under this Act for merely peacefully "persuading."

Askwith, 575–7.

Workmen at present enjoy the right to strike; workmen at present, also, are under no liability civil or criminal for merely peaceably persuading workmen to strike, but they are prevented from causing a "nuisance" to others by means of their efforts to peaceably persuade, and they are also prevented from combining to foster a strike amongst workmen who do not wish to strike, and eventually inducing them to strike by preventing them by "persuasion" from going on working as they desire.

Askwith, 233–236.

The law as to striking is clearly laid down in the following passages from the judgments of the Lord Justices in the Court of Appeal in *Lyons* v. *Wilkins* (1. Ch. 1896, 811).

Lord Lindley remarked at page 822.

"Persons can, not only decline individually to work for a master except upon terms which the workmen desire to obtain, but they can combine to do that. They can combine to leave him ; they can strike unless he will raise the wages up to what they desire, and trade unions which assist them in withdrawing their own labour and declining to work, and which, assist them in supporting themselves during the strike, can legally do so. Then arises a difficulty, which is as well known to those who conduct Trade Unions as it is to the masters, and to all persons who have experience in these disputes, and it may be put thus: 'If that is all that we can do, we may be defeated by the masters making arrangements with other people who may be willing to work for them, either by taking the work home, or by working for less wages than we think is right, and unless we can stop that our strike may be ineffective.'

Then comes the struggle.

Now, Parliament has not yet conferred upon Trade Unions the power to coerce people, and to prevent them from working for whomsoever they like upon any terms that they like ; and yet in the absence of such a power it is obvious that a strike may not be effective, and may not answer its purpose. Some strikes are perfectly effective by virtue of the mere strike, and other strikes are not effective unless the next step can be taken, and unless other people can be prevented from taking the place of the strikers. That is the pinch of the case in trade disputes ; and until Parliament confers on trade unions the power of saying to other people, 'You shall not work for those who are desirous of employing you upon such terms as you and they may mutually agree upon,' Trade Unions exceed their power when they try to compel people not to work except on the terms fixed by the Unions. I need hardly say that up to the present moment no such power as that exists. By the law of this country no one has ever, and no set of people have ever had that right or that power. If Parliament chooses to confer it on trade unions it will do so as and when it thinks proper, and subject to such limitations as it thinks proper ; but it is idle to pretend not to see that this struggle exists. Trade Unions have now been recognised up to a certain point as organs for good. They are the only means by which workmen can protect themselves from tyranny on the part of those who employ them ; but the moment that Trade Unions become tyrants in their turn, they are engines for evil ; they have no right to prevent any man from working upon such terms as he chooses."

Lord Justice Kay remarked at page 829.

"At present the Legislature has simply legalised strikes, and a strike is an agreement between persons who are working for a particular employer not to continue working for him. Also, I take it that under the terms of the section which I have read it is not illegal for a Trade Union to promote that strike. But further than that the law has not gone.

Lord Justice Kay remarked at page 830.

"Still more clearly is it illegal to induce a man or to prevent a man in the position of Schoenthal from working for the plaintiff by calling out the workmen of that man, and inducing them not to work for him that being done for the purpose of putting pressure both upon Schoenthal and upon Messrs. Lyons by preventing Schoenthal from working for Messrs. Lyons. I cannot read s. 7 without seeing distinctly that those things are not permissible by this Act of Parliament, and no Act of Parliament can be referred to which makes them lawful."

Lord Justice Smith, at page 834.

"What the union did was not done in furtherance of a trade dispute between Schoenthal and his men; but what they did was to call out Mr. Schoenthal's men in order to prevent him from working for Messrs. Lyons, and thus to compel Mr. Schoenthal, who was willing to work for Messrs. Lyons, not to work for them, by depriving him of the men wherewith to work for Messrs. Lyons, and by this means to injure Messrs. Lyons in their trade if they did not obey the edicts of the union. In my judgment that is inadmissible under the Acts of Parliament which I have mentioned and was illegal."

It is clear from the above quotations that the recommendation that persuasion to strike should be definitely granted by Act of Parliament is evidently not required in order to allow workmen to merely peaceably persuade others to strike, for that is allowed at present.

It should be considered in conjunction with the 8th Recommendation of the Majority Report, which proposes that an Act should be passed to abolish the offence of watching and besetting a man's house with a view to compel him not to do, or to do, that which it is lawful for him not to do or to do.

At present under the decision in *Lyons* v. *Wilkins* this is not only an offence within Section 7, Sub-Section 4 of the Conspiracy Act which Recommendation 8 of the Majority Report would cause to be repealed, but it may also be a nuisance at common law for which an action would lie; for such conduct seriously interferes with the ordinary comfort of human existence, and the ordinary enjoyment of the house beset and for which proof that the nuisance was caused by an attempt "peaceably to persuade other people" is no defence.

Recommendation 8 of the Majority Report would deprive the party, whose house was watched and beset, of his statutory remedy under the Conspiracy Act, 1875, and Recommendation 3 of the Majority Report would authorise the committal of a nuisance, and deprive the injured party of his common law remedy. The man whose house was watched and beset would thus be deprived of every legal remedy, and as far as legal protection was concerned would become practically an outlaw. Even the Bills promoted in Parliament on behalf of Trade Unions of workmen never suggested that anything more than what was called "peacefully persuading" should be an excuse for watching and besetting; whereas the Recommendations 3 and 8 of the Majority Report would not only legalise watching and besetting altogether, but would definitely legalise persuasion without the qualification "peaceful."

The reasons against these Recommendations are, I should have hoped, sufficiently obvious; but not the least stringent of them will be found in Paragraph 48 of the Majority Report itself, which I quote on page 127 of my Report below.

The evidence as to what has been done under the guise of "peaceful persuasion," even under the existing limitations of the Conspiracy Act, has been overwhelming. I am by no means convinced that the substitution recommended by the Majority Report for those existing limitations would afford anything like equal protection to that given at present, when it is coupled with the definite legalisation of "persuasion," in place of the existing prohibition even of peaceful persuasion as an excuse for watching and besetting; I feel I cannot over-estimate the magnitude of the injury that would be inflicted not only on employers, not only on trade, but more than all on non-Unionist workmen, who, though they are ten times as numerous as the Unionists, are still, as the evidence has shown,* not only themselves but also their families, too often at the mercy of the organised minority, and would, if these Recommendations were carried out, be subjected to practically unrestricted coercion.

Kenshole, 1768.*
White, 2027.
Noble, 2410.
Askwith, 2678.
Browne, 2935.
Thomson, 2982.
2998.
Wright, 3060.
Millar, 3360.
Rudd, 3477.
Lockhead, 3606.
Newman, 3671.
Badger, 3719.
Liscombe, 3753.
Heenan, 3791.
Watson, 3831.
Inglis, 3911.

The evidence of our witnesses was unanimous in recommending that the decision in *Lyons* v. *Wilkins* be maintained; these Recommendations would in effect over-rule it. There is nothing, therefore, in the evidence to justify these Recommendations, and neither on the ground of expediency nor of the public welfare can I conceive any justification for their being carried out.

James, 4739.
Hadden, 4752
French, 4778.
Benham, 4980.
Stoddart, 5089.
Lawes, 5376.

Recommendation IV. of the Majority Report.

(4) "That an Act should be passed to declare that an individual shall not be liable for doing any act not in itself an actionable tort only on the ground that it is an interference with another person's trade, business, or employment."

The Majority Report (Article 64) alleges as a justification for Recommendation 4 that *Allen* v. *Flood* decided practically to that effect, but that as there have been several dicta throwing doubt on this point, the Majority Report makes this Recommendation.

The House of Lords decided the case of *Allen* v. *Flood* in 1898, and the case of *Quinn* v. *Leathem*, in which the alleged contradictory dicta occurred, in 1901. It may be remarked in passing that the House of Lords decided both cases, and that the House of Lords cannot overrule itself, and that if there is really a conflict, it could only be decided in favour of one or the other decision by legislation. But, is there a conflict? That appears to me to be the point, and, not being a lawyer, I turn for information to the judgments of the House of Lords in *Quinn* v. *Leathem*, only to find that the decision in *Allen* v. *Flood* was carefully considered by the Lords who decided the case of *Quinn* v. *Leathem*, and that in their minds there did not appear to be that confusion which the Majority Report appears to suggest.

The Lord Chancellor in his judgment in *Quinn* v. *Leathem* [1901] A.C. 506, makes this statement:

"Before discussing the case of Allen *v.* Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. My Lords, I think the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision of the case of Allen *v.* Flood."

The Lord Chancellor goes on to say (at p. 507):

"This case is distinguished in its facts from those which are essentially important facts in Allen *v.* Flood."

Lord Macnaghten in his judgment remarks (at p. 508):

"I cannot help thinking that Allen *v.* Flood has very little to do with the question now under consideration."

Lord Shand in his judgment remarks (at p. 515):

"Their acts (*i.e.*, the defendants') were wrongful and malicious in the sense found by the jury—that is to say they acted by conspiracy, not for any purpose of advancing their own interests as workmen, but for the sole purpose of injuring the plaintiff in his trade. I am of opinion that the law prohibits such acts as unjustifiable and illegal: that by so acting the defendants were guilty of a clear violation of the rights of the plaintiff, with the result of causing serious injury to him and that the case of Allen *v.* Flood, as a case of legitimate competition in the labour market, is essentially different and gives no ground for the defendants' argument."

Lord Brampton in his judgment remarks (at p. 523):

"Rightly understood I think the judgment in Allen *v.* Flood is harmless to the present case. But I need hardly say that in order properly to understand and appreciate it, it is essential to ascertain what were the material facts assumed to exist by their Lordships who assented to that judgment, and what were the principles of law applied by them to those facts. . . . In this case the alleged cause of action is very different from that in Allen *v* Flood."

Lord Lindley in his judgment remarks (at pp. 536, 537):

"The facts of the case are entirely different from those which the House had to consider in Allen *v.* Flood. Every element necessary to give a cause of action on ordinary principles of law is present in this case . . . . 'Allen *v.* Flood' is far from covering this case and can only be made to cover it by greatly extending its operation."

The above quotations from the judgments of the Lords who decided the case of *Quinn* v. *Leathem* appear to me to dispose of the contention in Article 64 of the Majority Report that the previous decision in *Allen* v. *Flood* makes it desirable to pass legislation which would in effect destroy the decision in *Quinn* v. *Leathem* on the ground of an alleged conflict between the two decisions whereas, in point of fact, the conflict, in the minds of those who decided the case, did not exist.

Persuading workmen to strike who without persuasion would not have struck, threatening an employer to call out his Unionist workmen unless

the non-Unionist workmen are discharged, threatening the employer's customer to call out the Unionist workmen of the customer unless the employer discharges his non-Unionist workmen, such acts are not an exercise of the right to strike, but are acts of interference directed against the employer or his customer, and therefore are *prima facie* unlawful, and in the absence of justification absolutely unlawful. Lord Lindley in *Quinn* v. *Leathem* describes such acts as a dictation to the employer and his customers and servants of what they are to do, a violation by the workmen of their duty to the employer, his customers, and servants, which is to leave them in the undisturbed enjoyment of their liberty of action.

Lord Brampton, too, in his judgment, quoted with approval the following sentence of Sir W. Erle :—

"Every person has a right under the law, as between himself and his fellow subjects, to full freedom in disposing of his own labour or his own capital according to his will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others."

I most strongly object to this Recommendation 4. It is directly in conflict with the evidence, which was unanimous in favour of maintaining the decision in *Quinn* v. *Leathem* intact. Neither on the evidence given before us nor on any general ground of policy does there appear to me to be any justification for legislation to legalise interference with another's trade, business, or employment, which the law at present, as laid down by Lord Lindley and Lord Brampton in *Quinn* v. *Leathem*, clearly prohibits.

Recommendation V. of the Majority Report.

(5) "That an Act should be passed to provide for the facultative separation of the proper benefit funds of Trade Unions, such separation, if effected, to carry immunity from these funds being taken in execution."

I am aware that a large number of witnesses who came before us had no objection to this step, but the Trade Unions of workmen have always been opposed to the separation suggested. I do not think the facilities, if granted, would be availed of, and even if carried out I do not think these funds should be immune.

It is not easy to see why, as a matter of justice, the claims of members to provision made by themselves and for themselves against old age, sickness, etc., should be deemed superior to the claim of outsiders to reparation for the wrongs which those members, as represented by their Unions, have committed against them.

I am glad to say Sir Godfrey Lushington's view coincides with mine on this point and I cordially agree with the arguments used by him in his Report in opposition to this Recommendation.

Recommendation VI. of the Majority Report.

(6) "That an Act should be passed to provide means whereby the central authorities of a Union may protect themselves against the unauthorised and immediately disavowed acts of branch agents."

A Trade Union is not liable unless the plaintiff can prove that a legal wrong has been done to him, that the wrongdoer was an agent of the Trade Union, and that in doing the wrong he acted within the scope of his employment. The general law of agency applies to Trade Unions in the same manner as it applies to everybody else. Just as any other employer is liable for the acts of his servants, so those who constitute Trade Unions and employ officials are liable for the acts of those officials within the scope of their authority or duty. If the law of agency is to be altered, it must be altered so as to apply generally, but it would be outside the scope of our reference to have inquired into this subject, and we have had no evidence as to the advisability or otherwise of this course.

Askwith, 758–769.
Askwith, 336–337.
Browne, 2722, 2835.

I desire to associate myself with the arguments used by Sir Godfrey Lushington in his Report in opposition to this Recommendation.

Recommendation VII. of the Majority Report.

(7) "That an Act should be passed to provide that facultative powers be given to Trade Unions, either (*a*) to become incorporated subject to proper conditions, or (*b*) to exclude the operation of Section 4 of the Trade Union Act, 1871, or of some one or more of its Sub-sections, so as to allow Trade Unions to enter into enforceable agreements with other persons and with their own members."

Proposals for voluntary incorporation were made by the majority of the Commissioners both of the Royal Commission on Trade Unions of 1867 and the Royal Commission on Labour, 1894, but in both instances there were minority Reports signed by the representatives of Trade Unions of workmen dissenting from these proposals. It is quite true that several of our witnesses representing various interests as employers have stated they see no objection to this course, but we have not had the advantage of hearing the views of the Trade Unions of the employed on the point. On the other hand, most of our witnesses have expressed no opinion on this particular point, whereas there has been a unanimous opinion expressed by our witnesses as to leaving the liability of Trade Unions to rest on the decision of the House of Lords in the Taff Vale case.

Beasley, 1316. Taylor and Kearney, 2167. Rhodes, 2346. Noble, 2275, 2583. Browne, 2841. Inglis, 4032. Livesey, 4542.

Under these circumstances I cannot concur in the recommendation of voluntary incorporation "*subject to proper conditions*" being made possible by Act of Parliament. The advisability, or otherwise, of this course would largely depend on the views taken as to what were "proper conditions" as to which the Recommendation is discreetly silent.

My personal experience of industrial conditions has proved that satisfactory and binding agreements, can be made between employers and workmen, as individuals, without the intervention of a Trade Union. I am anxious that workmen should be as free as at present to conclude such arrangements directly, without Trade Union intervention, but, as several of our witnesses have pointed out the advisability of making agreements entered into between Trade Unions of workmen and Trade Unions of employers legally enforceable, which at the present time they are not, owing to Sub-section 4 of Section 4 of the Trade Union Act of 1871, I agree, therefore, that this Sub-section should be repealed. I cannot assent to the Recommendation that "Section 4 of the Act of 1871, or some one or more of its Sub-sections," should likewise be repealed on the ground that this repeal is necessary to allow Trade Unions to enter into enforceable agreements with their own members. The sub-sections alluded to in this Recommendation, although vaguely referred to as "one or more," are no doubt Sub-sections 1, 2, and 5. The witnesses who have been before us as representing Trade Unions of employers have not advised this repeal as necessary, and we have not had the advantage of hearing the views of witnesses on this point on behalf of the Trade Unions of workmen.

Askwith, 366–370, 379–381. Guthrie, 1412 (p. 109). Browne, 2952. Young, 3571. Inglis, 4031. Soall, 4164. Livesey, 4527, 4533–4.

It appears to me that this repeal would enable the Trade Unions to bring actions and obtain injunctions against individual members while leaving the individual members still unable through the operation of Sub-section 3 (a) of Section 4 to bring an action against the Trade Union of which they were members for refusing to apply for their benefit the benefit funds to which they had contributed. The repeal of this Sub-section 3 (a) of the 4th section of the Trade Union Act of 1871 would relieve many members of Trade Unions from hardships to which they are at present exposed through its existence, as set forth in the evidence given before us, and I therefore recommend that this should also be repealed in addition to the repeal of Sub-section 4 of the 4th section of the Trade Union Act of 1871.

Beasley, 987 (p. 61), 1019, 1316 (p. 101). Duke, 3034–3041. Liscombe, 3753. Livesey, 4436.

I again have the pleasure of associating myself with the arguments advanced by Sir Godfrey Lushington in his Report, against this Recommendation (7) of the Majority Report, though I am willing, as stated above, to assent to the repeal of Sub-section 4 of Section 4 of the Trade Union Act, 1871, which would be in accordance with the suggestions advanced by several of our witnesses.

Recommendation VIII. of the Majority Report.

(8) "That an Act should be passed to alter the 7th Section of the Conspiracy and Protection of Property Act, 1875, by repealing Sub-section 4 and the proviso, and in lieu thereof enacting as a new Sub-section (which would also supersede Sub-section 1): Acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his family, or damage be done to his property."

The Conspiracy and Protection of Property Act, so far as it would be repealed in consequence of Recommendation (8) of the Majority Report is as follows:

"**Section VII.** Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully and without legal authority,—

"1. Uses violence to or intimidates such other person or his wife or children, or injures his property;

"4. Watches or besets the house or other place where such other person resides, or works, or carries on business or happens to be, or the approach to such house or place;

"shall on conviction therof by a court of summary jurisdiction, or on indictment as hereinafter mentioned be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour."

"Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section."

"Watching and besetting" is at present a criminal offence. If this Recommendation (8) were acted upon it would no longer be so.

The decision in *Lyons* v. *Wilkins* merely comes to this, that if you wrongfully and without legal authority watch or beset the house, etc., of another *with a view to compel him* to abstain from doing or to do any act which he has a legal right to do or abstain from doing, the mere fact that you were according to your contention engaged in "peaceful persuasion" is not a good defence. You are allowed so to attend if your object is merely to obtain or communicate information under the statute, but the Court refused to extend the words of the statute to "peaceful persuasion."

With regard to the decision of the Court of Appeal in *Lyons* v. *Wilkins*, it should be remembered that though the Trade Union Congress of 1901 were advised by their counsel to get a decision of the highest tribunal on the question of "picketing," and though the Parliamentary Committee of that Congress apparently so decided, no steps have been taken by them to get the decision of the Court, of which they have complained so much, over-ruled by the House of Lords.

I am in entire agreement with the arguments advanced by Sir Godfrey Lushington in opposition to this Recommendation (8) of the Majority Report, and the conclusion which he comes to coincides with my own Recommendation. Sir Godfrey Lushington sums up the position in the following words:

"I am of opinion that picketing is an abuse for which a remedy is urgently required, and that the personal freedom of workmen needs not less protection than hitherto, but more. I, therefore, recommend that the existing prohibition of watching and besetting be retained and that the proviso permitting it for the sole purpose of giving and receiving information be repealed."

I beg to refer to the following extract from Article 48 of the Majority Report *re* Picketing, with which I, also, cordially agree:—

"THE EVIDENCE ON THIS MATTER LAID BEFORE US IS ON THIS POINT REALLY OVERWHELMING, AND IS EVIDENCE WHICH THE TRADE UNIONS HAVE MADE NO ATTEMPT TO CONTRADICT. WHAT IT COMES TO IS THIS, THAT WATCHING AND BESETTING FOR THE PURPOSE OF PEACEABLY PERSUADING IS REALLY A CONTRADICTION IN TERMS. THE TRUTH IS THAT PICKETING—WHEN IT CONSISTS OF WATCHING OR BESETTING THE HOUSE, ETC., HOWEVER CONDUCTED—AND IT IS TO BE OBSERVED THAT THE STATUTE PLACES NO LIMIT TO THE NUMBER OF PERSONS ATTENDING FOR THE PURPOSE ONLY OF OBTAINING OR COMMUNICATING INFORMATION, OR TO THE LENGTH OF TIME DURING WHICH SUCH ATTENDANCE MAY BE MAINTAINED—IS ALWAYS AND OF NECESSITY IN THE NATURE OF AN ANNOYANCE TO THE PERSON PICKETED. AS SUCH, IT MUST SAVOUR OF COMPULSION, AND IT CANNOT BE DOUBTED THAT IT IS BECAUSE IT IS FOUND TO COMPEL THAT TRADE UNIONS SYSTEMATICALLY RESORT TO IT."

I am at a loss to understand how my colleagues, who, in the Majority Report which they have signed, have given their opinion as to what "watching and besetting" is in practice, could have brought themselves to make a Recommendation which removes "watching and besetting" from the list of criminal offences, and *ipso facto* legalises it.

We have had before us witnesses representing every leading trade and industry in the United Kingdom and they are unanimous in saying that in practice such a thing as "peaceful persuasion" is unknown.

Some of them have suggested that *prima facie* there would be no objection to allowing attendance for obtaining or communicating information, as at present, if the law was amended so that the attendance was limited, to two or three persons so attending, but the large majority of the witnesses have expressed the view that there is no difference in practice between the so-called "obtaining or communicating information" and the so-called "peaceful persuasion." Our witnesses are unanimous in recommending that the law should not be amended so as to allow what has taken place before under the guise of "peaceful persuasion" prior to the decision in "*Lyons* v. *Wilkins*," and which would take place again if that decision were over-ruled by statute. Some of the witnesses have expressed themselves satisfied with the law as at present declared; others have desired to see further protection given by limiting the number allowed to attend for "obtaining or communicating information." None of them have advocated "peaceful persuasion" so-called being allowed by law. The possibility of "watching and besetting" being legalised, without any qualification whatever, was never suggested to the witnesses when giving their evidence. Such a possibility has never been suggested in any of the Bills promoted in Parliament on behalf of the Trade Unions of workmen. The representatives of the Trade Unions of workmen have made no such drastic proposal: it has been reserved for those who have signed the Majority Report to do so, and this, too, in the face of the evidence given before us, and, as it appears to me, in direct conflict with the views expressed by them in Article 48 of their Report.

The object, no doubt, of this Recommendation (8) in the Majority Report is to do away with the sense of grievance or bad faith as to this question of "peaceful persuasion" due to the statement on behalf of the Government of 1875 that words to allow peaceful persuasion were unnecessary, as they were implied by the terms of the Bill, which allowed "obtaining or communicating information." (See Majority Report, Article 46.) Our evidence has shown that intimidation almost invariably results from picketing, whether it is carried on for "information" or "peaceful persuasion" purposes. The Trade Unions of workmen have had every opportunity of coming forward to deny this evidence; they have not done so. They have complained of the injustice of the decision in "*Lyons* v. *Wilkins*"; they have not appealed against it. The Government of thirty years ago thought "peaceful persuasion" was included in "obtaining or communicating information." The Courts, applying their ordinary principle as to the construction of statutes*, have decided this is not so. The experience of thirty years since has shown that intimidation results from "picketing" under whatever name it is included.

Our witnesses are unanimous against any extension of "picketing" by allowing "peaceful persuasion"; some of them think that "obtaining or communicating information" might be left if the members so attending were limited to two or three, but the great majority think picketing should be abolished altogether, and to do this I recommend that the *proviso only* of Section 7 of the Conspiracy, etc., Act, 1875, be repealed so that wrongfully and without legal authority watching and besetting the house, etc., of another with a view to compel him to do or abstain from doing any act which he has a legal right to do or abstain from doing may no longer be lawful, and this is the proposal which Sir Godfrey Lushington, also, recommends in his Report.

I am satisfied that the law, as at present declared, with this amendment would ensure sufficient protection both to employers and employed.

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* *See Maxwell on "Interpretation of Statutes," 3rd Edition, p. 38:*

> *"It is unquestionably a rule that what may be called the Parliamentary history of an enactment is not admissible to explain its meaning. Its language can only be regarded as the language of the three estates of the Realm, and the meaning attached to it by its framers, or by individual members of one of those estates, cannot control the construction of it"*

I have carefully considered the question of substituting the new Sub-section recommended in Recommendation (8) of the Majority Report, viz. :

"Acts in such a manner as to cause a reasonable apprehension in the mind of any person that violence will be used to him or his family, or damage be done to his property."

It appears to me that, in effect, it comes to much the same thing as Sub-section (1) of Section 7 of the Conspiracy and Protection of Property Act, 1875, which it proposes to repeal, which is as follows :—

"Uses violence to or intimidates such other persons or his wife or children, or injures his property."

It appears to make a new criminal offence "causing a reasonable apprehension in the mind of any person" in place of an existing criminal offence of "intimidation." But the new subsection is not only to take the place of that just quoted (Subsection (1)), but is also in substitution for the existing provision making "watching and besetting" a man's house a criminal offence.

Even if the proposal were limited to the repeal only of Sub-section (1) I should not be prepared to accept it in substitution for the reasons stated hereafter. As a substitution for the "watching and besetting" provisions at present existing, it seems to me entirely inadequate. It might have been at least a more adequate attempt to provide a like protection to that existing already if the words "or acts in combination with others so as to create a nuisance" had been added. My colleagues who have signed the Majority Report, in the course of their argument in Article 48 in support of Recommendation (8), remark that :

"It must be remembered that if picketing amounts to a nuisance, it can be restrained, by "injunction, and that a Trade Union which authorises the nuisance can be made liable to a "civil action."

Mr. Askwith, however, in his evidence pointed out that one of the objects of the legislature was to substitute a provision which could be enforced summarily in the place of legal proceedings which could only be enforced by an extremely difficult and expensive process, *i.e.*, by an action at law claiming an injunction and damages for any loss. Proceedings to abate a nuisance and an injunction would, in practice, be perfectly useless, because the strikers could put on separate men each time, which would mean that the injured party would have to bring, possibly, hundreds of actions in order to abate the nuisance. Even with the addition "or acts in combination with others so as to create a nuisance" I could not have accepted the new sub-section as a desirable substitution. I am not as acquainted with the law as my colleagues who have signed the Majority Report, but I do foresee, as a layman, that the Courts would be certain to be approached by one side or the other in order to obtain decisions as to the meaning and interpretation of the words used in the new sub-section, whereas under the decision of the Court of Appeal in "*Lyons* v. *Wilkins*," the employers are satisfied both in law and practice, and the Trade Unions of workmen, by their failing to appeal against it, appear to be satisfied that it is good law, however much they object to it in practice.

Askwith, 482, 486.

If the result of the substituted sub-section is in law to weaken the protection against intimidation which at present exists for employers and employed I am against it ; if on the other hand, I am wrong as to the legal effect and the result in law is merely by another method to achieve an equal protection to that now afforded, I must still prefer the present declaration of the law which has been accepted by both sides, whereas the new enactment would lead to new litigation and consequent great expense.

Recommendation IX. of the Majority Report.

(9) "That an Act should be passed to enact to the effect that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be the ground of a civil action, unless the agreement or combination is indictable as a conspiracy notwithstanding the terms of the Conspiracy and Protection of Property Act, 1875."

The House of Lords in *Quinn* v. *Leathem* 1901 A.C. 495 decided that the Conspiracy and Protection of Property Act, 1875, Section 3 (which exempted combinations in trade disputes from the law of criminal conspiracy) had nothing to do with civil remedies.

This Recommendation (9) of the Majority Report would do away with the decision in *Quinn* v. *Leathem*. The facts of the case will be found quoted in Article 56 of the Majority Report.

I would, in addition, quote a few passages from the judgments of the Law Lords who decided the case.

Lord Halsbury, Lord Chancellor, in his judgment (P. 585) remarks :—

"The plaintiff has proved to the satisfaction of a Jury that the defendants have wrongfully and maliciously induced customers and servants to cease to deal with the plaintiff, that the defendants did this in pursuance of a conspiracy framed among them, that in pursuance of the same conspiracy they induced servants of the plaintiff not to continue in the plaintiff's employment, and that all that was done with malice in order to injure the plaintiff, and that it did injure the plaintiff. If upon these facts so found the plaintiff could have no remedy against those who injured him, it could hardly be said that our jurisprudence was that of a civilised community."

Lord Macnaghten (at P. 511) remarks :—

"A man may resist without much difficulty the wrongful act of an individual . . . but it is a very different thing when one man has to defend himself against many combined to do him wrong."

Lord Shand (at P. 515) remarks :—

"They acted by conspiracy, not for any purpose of advancing their interests as workmen, but for the sole purpose of injuring the plaintiff and his trade. I am of opinion that the law prohibits such acts as injustifiable and illegal: that by so acting the defendants were guilty of a clear violation of the rights of the plaintiff, with the result of causing serious injury to him."

Lord Brampton (at P. 530) remarks :—

"Much consideration of the matter has led me to be convinced that a number of actions and things not in themselves actionable or unlawful, if done separately without conspiracy may, with conspiracy, become dangerous and alarming, just as a grain of gunpowder is harmless but a pound may be highly destructive, or the administration of one grain of a particular drug may be most beneficial as a medicine but administered frequently and in larger quantities with a view to harm may be fatal as a poison."

Lord Lindley (at P. 537) remarks :—

"It was contended at the bar that if what was done in the case had been done by one person only, his conduct would not have been actionable, and that the fact that what was done was effected by many acting in concert makes no difference. My Lords, one man without others behind him who would obey his orders could not have done what these defendants did.

(At p. 538)—

"My Lords, it is said that the conduct which is not actionable on the part of one person cannot be actionable if it is that of several acting in concert. This may be so where many do no more than one is supposed to do. But numbers may annoy and coerce where one may not. Annoyance and coercion by many may be so intolerable as to become actionable, and produce a result which one alone could not produce.

(At P. 541)—

"But there are many ways short of violence, or the threat of it, of compelling persons to act in a way which they do not like. . . . Is a combination to annoy a person's customers, so as to compel them to leave him unless he obeys the combination permitted by the Act or not? It is not forbidden by Section 7; is it permitted by Section 3? I cannot think that it is. . . . It must be conceded that if what the defendants here did had been done by one person it would not have been punishable as a crime."

(At P. 542)—

"An illegal agreement, whether carried out or not, is the essential element in a criminal case: the damage done by several persons acting in concert, and not the criminal conspiracy, is the important element in the action for damages.

"In my opinion, it is quite clear that Section 3 has no application to civil actions: it is confined entirely to criminal proceedings. Nor can I agree with those who say that the civil liability depends on the criminality, and that if such conduct as is complained of has ceased to be criminal it has, therefore, ceased to be actionable. On this point I will content myself by saying that I agree with Andrews, J., and those who concurred with him. It does not follow, and it is not true, that annoyances which are not indictable are not actionable. The law relating to nuisances, to say nothing of the law relating to combinations, shows that many annoyances are actionable which are not indictable, and the principles of justice on which this is held to be so appear to me to apply to such cases as these.

"My Lords, I will detain your Lordships no longer. *Allen* v. *Flood* (2) is in many respects a very valuable decision, but it may be easily misunderstood and carried too far.

"Your Lordships are asked to extend it and to destroy that individual liberty which our laws so anxiously guard. The appellant seeks by means of *Allen* v. *Flood* (2), and by logical reasoning based upon some passages in the judgments given by the noble Lords who decided it, to drive your Lordships to hold that boycotting by trades unions in one of its most objectionable forms is lawful, and gives no cause of action to its victims although they may be pecuniarily ruined thereby.

"My Lords, so to hold would, in my opinion, be contrary to well-settled principles of English law, and would be to do what is not yet authorised by any statute or legal decision."

Our witnesses have unanimously expressed their satisfaction with the law declared in *Quinn* v. *Leathem*, and those of our witnesses who have specifically dealt with the purport of Recommendation (9) of the Majority Report are agreed that such an exemption as is proposed in the case of trade disputes from the general law of conspiracy would be highly injurious to the community. It is impossible for me to disregard the evidence which has been given before us, and I must most strongly dissent from this recommendation. The law of conspiracy is a general law affecting everyone of His Majesty's subjects. It is true that, at the desire of the Trade Unions of workmen, the Conspiracy, etc., Act of 1875 exempted combinations in trade disputes from the consequences attaching to criminal conspiracy. The Trade Unions of employers, so far from desiring any extension of this privilege to cover civil conspiracy, have come before us and unanimously and categorically expressed themselves against any such exemption from the general law being granted in the case of trade disputes. The Trade Unions of workmen have, as we know from outside sources, desired this extension, but they have given no evidence before us to that effect and have allowed the evidence given on the other side to go unchallenged. When the exemption from criminal conspiracy was granted by the Conspiracy, etc., Act, 1875, to combinations in trade disputes, the subject of civil conspiracy was not discussed, as the civil liability of Trade Unions had not then, though existent, been brought before the Courts. The remarks of the promoters of that legislation referred only, as it appears to me, to that which was present to their minds; they cannot be taken to imply a promise that a limited privilege granted in the knowledge of certain facts should when new circumstances have arisen be made absolute so as to cover these new circumstances and conditions. The new circumstances and conditions must be viewed in the light of the present, with the experience gained from our acquaintance with the practices prevailing in trade disputes in the past.

Guthrie, 1488.
Hadden, 4752.
Hickson, 4221.
Inglis, 3947–52.
Lockhead, 3606.
Millar, 3208.
Nesbit, 5165.
Noble, 2510, 2520–1.
Owens, 4815.
Rhodes, 2202.
Soall, 4102.
Stoddart, 5089.
Warburton, 5019.
Watson, 3809.

The Trade Union of workmen's complaint is that the judgments given against them in the law courts in the *Taff Vale* case, *Quinn* v. *Leathem*, and *Lyons* v. *Wilkins* entirely alter the law in what has been understood to be its meaning for the last thirty years. This erroneous belief is evidently not considered by my colleagues who have signed the Majority Report to be a ground of relief, for they recommend the maintenance of the Taff Vale decision in Paragraphs 1–35 of the Report, with which paragraphs Sir Godfrey Lushington and I also concur. Their decision to recommend the overruling of *Quinn* v. *Leathem* cannot, therefore, be based on the ground of compassion for erroneous belief. They remark in Article 60:—

Appendix to Evidence, p. 9.

"The protection conceded was at that time (*i.e.*, 1875) confined to the criminal side. We think it can fairly be said that the civil side should be equally dealt with."

I am afraid I fail to follow the argument. Surely the mere fact that combinations in trade disputes are already exempt from the law of criminal conspiracy which applies to every other body of persons is, in itself, no argument for exempting them from *all* liability, civil as well as criminal. Moreover, as is pointed out by my colleagues in the Majority Report, Article 54:—

"The civil action of conspiracy differs in this respect from the criminal, that the conspiracy is not complete by mere agreement, but must result in something being done from which damage results in order that the action may lie."

In view of the inherent differences thus shown between the civil and criminal aspects of conspiracy, there appears to me to be no inconsistency in the present position, under which, in trade disputes, a conspiracy may be actionable, although not punishable as a crime, by reason of the exemption from criminal liability granted under the Conspiracy Act.

Moreover, my colleagues who have signed the Majority Report in Article 33 remark :—

"WHEN TRADE UNIONS COME IN CONTACT BY REASON OF THEIR OWN ACTIONS WITH OUTSIDERS AND EX HYPOTHESI WRONG THOSE OUTSIDERS, THERE CAN BE NO MORE REASON THAT THEY SHOULD BE BEYOND THE REACH OF THE LAW THAN ANY OTHER INDIVIDUAL, PARTNERSHIP OR INSTITUTION."

If my colleagues had acted consistently with their own maxim as laid down in Article 33, Recommendation 9 of the Majority Report would never have been made it seems to me.

11. There is one passage in Mr. Sidney Webb's Memorandum on page 18 which I cannot allow to pass without comment. He refers to the system in New Zealand and Australia as being "to the general satisfaction of employers and employed." I have no information as to the satisfaction or otherwise felt by the employed with that system, but from the information I have received from employers out there I should be inclined to say their feeling was better described as one of general dissatisfaction, rather than satisfaction, with the system.

12. Whatever may be the explanation of the Recommendations made by my colleagues in the Majority Report, I have no hesitation in saying it will not be found in the evidence given before us. We called before us no less than 58 witnesses representing all the leading trades and industries, and their evidence was heard for 28 days; yet, to my surprise, my colleagues who have signed the Majority Report have thought it right to entirely ignore this evidence, except only so far as it relates to the maintenance of the Taff Vale decision, as to which we are unanimous (Majority Report, Articles 1–35, 39). My surprise that these Recommendations should be made will be shared not only by the witnesses who, at our request, gave evidence before us and whose evidence, though practically unanimous, has been absolutely ignored, but will be equally felt by any impartial person who will peruse the Volume of Evidence issued simultaneously with our Report. My recommendations which are entirely based upon the evidence, confirmed as it is by my own personal experience, may be summarised as follows :—

(1) That no statute should be passed which would in effect repeal the decisions in the *Taff Vale* case, *Lyons* v. *Wilkins*, and *Quinn* v. *Leathem*, the beneficial effects of which to the community generally have been emphasised by all our witnesses.

(2) That Sub-section 3 (a) of Section 4 of the Trade Union Act, 1871, be repealed in order to give members of a Trade Union a right of action against the Trade Union to which they belong for improperly refusing to apply for their benefit the benefit funds to which they had contributed and that Sub-section 4 of Section 4 of the Trade Union Act, 1871, be also repealed in order to make agreements entered into between Trade Unions of workmen and Trade Unions of employers legally enforceable. This recommendation is made subject to my remarks on page 126 above.

(3) That the proviso only of Section 7 of the Conspiracy and Protection of Property Act, 1875, be repealed in order to prevent watching and besetting under any circumstances. This Recommendation is also made by Sir Godfrey Lushington in his Report.

(4) That in view of the overwhelming evidence we have received as to the cruelty and oppression to which non-Unionists are subjected at present, the practicability of devising legislation to prohibit strikes against non-Unionists should be considered in order to prevent, if possible, the existing gross infringements of the liberty of the subject.

ALL WHICH I HUMBLY SUBMIT TO YOUR MAJESTY'S MOST GRACIOUS CONSIDERATION.

(Signed) W. THOMAS LEWIS.

ROYAL COMMISSION ON TRADE DISPUTES AND TRADE COMBINATIONS.

REPORT

OF THE

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AND

TRADE COMBINATIONS.

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